SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 113

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

APPELLANTS,

VS.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ELMER J. JENSEN, PERCY T. LYON, *et al.*

No. 114

FREIGHT FORWARDERS' INSTITUTE,

APPELLANT,

VS.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ELMER J. JENSEN, PERCY T. LYON, *et al.*

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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(File Endorsement Omitted)

In the District Court of the United States
Southern District of California
Central Division

Civil No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH,

PLAINTIFFS,

VS.

UNITED STATES OF AMERICA,

DEFENDANT.

Bill of Complaint—Filed Aug. 30, 1948

Pacific Coast Wholesalers' Association and Elmer J. Jensen, Percy T. Lyon, Ira C. Lambert, G. A. Olson and Sol Smith bring this their Bill of Complaint against the United States to enjoin, set aside, suspend and annul a certain report, requirement and order of the Interstate Commerce Commission (hereinafter sometimes called the Commission), and in support of this, their prayer for such relief, complaint and say:

I.

Plaintiff, Pacific Coast Wholesalers' Association, hereinafter sometimes called the Association, is a non-profit corporation organized pursuant to the provisions of the Civil Code of California, Division First, Part IV, Title XII, having its principal place of business in Los Angeles, California. It has no capital stock, does not earn or declare dividends and membership therein, limited under the by-laws to fifty, is evidenced only by non-transferable membership certificates.

II.

Plaintiffs, Elmer J. Jensen, Percy T. Lyon and Ira C. Lambert, are members of the Board of Directors of the plaintiff Association composed of five directors and Elmer

J. Jensen is the President and Percy T. Lyon is the Vice President of said Association. Plaintiffs G. A. Olson and Sol Smith are, respectively, General Manager and Executive Secretary of said Association. Plaintiffs are residents of the Southern District of California.

III.

The jurisdiction of this Court is predicated upon, and defendant, United States of America, is sued under Acts of Congress approved June 18, 1910 (36 Stat. 539), March 3, 1911 (36 Stat. 1149), and October 22, 1913 (38 Stat. 219); Code of Laws of the United States, Title 28, Sections 41, paragraphs (8) and (28), and 43-48, inclusive, which Acts confer upon the District Courts of the United States jurisdiction of suits to enjoin, set aside, annul and suspend in whole or in part orders of the Interstate Commerce Commission.

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IV.

This suit is to enjoin, set aside, annul and suspend a certain report, requirement and order entered by the Commission on the 18th day of December, 1947, in a proceeding entitled, "*Ex Parte No. 160, Pacific Coast Wholesalers' Association, Investigation of Status,*" whereby the plaintiffs herein are required to discontinue certain operations, the subject of said report, and notify the Commission in writing, under oath, that said operations have been discontinued. By subsequent orders of the Commission the effective dates for compliance with said requirements for discontinuance and notice were postponed to September 15 and September 30, 1948, respectively.

V.

The members of the plaintiff Association, of which there are forty-three at the present time, are and at all times herein stated have been engaged in business at various points in the States of California, Oregon, Washington, Utah and Arizona as wholesalers of automotive parts, machinery, hardware and other articles of property acquired by said members by purchase from manufacturers and other suppliers located at various points east of Chicago, Illinois, and transported by common carrier truck lines, railroads, or freight forwarders, or a combination thereof, from the points of origin to the various points of destination in the Pacific Coast territory as required by the respective purchasers, members of the Association.

VI.

The freight rates as set forth in the published tariffs of the common carriers employed to transport the aforesaid property of the members of the Association are, and at all times herein mentioned have been, substantially lower on carload shipments than on less-carload shipments
63 of the same articles of property, and the Association was created and its members have participated therein for the primary purpose of consolidating the less-carload shipments of the members into carloads at Chicago and shipping such carloads to points of destination in Pacific Coast territory to secure for members of the Association the benefit of the lower carload rates.

VII.

In carrying on its business the Association, acting exclusively for its members and pursuant to instructions given by them, receives at Chicago the inbound less-carload shipments of the members from manufacturers and other suppliers located at points east of Chicago, assembles such shipments in carloads which are then shipped by the Association as consignors, to itself as consignee, from Chicago to break-bulk points at Los Angeles and San Francisco, California; Phoenix, Arizona; Portland, Oregon; Seattle, Spokane and Yakima, Washington, and Salt Lake City, Utah, from which points the individual shipments are distributed by the Association to the members. The Association arranges for the consolidating, loading and shipment of the carloads and for the payment of the freight charges on the inbound less-carload shipments at Chicago, pays the freight charges on the carload shipments from Chicago to break-bulk points, and the drayage and other delivery charges at destination; arranges and pays for insurance on all shipments of its members from points of origin to final destination; handles and prosecutes on behalf of its members all claims for loss or damage to the members' property included in the consolidation; maintains complete and accurate records of all shipments handled, and of the costs and expenses incurred by the Association, and makes a monthly settlement with
64 each of its members whereby they are charged for the actual cost of handling, consolidating, transporting and distributing their respective shipments and all other costs incidental thereto, and are credited with all sums advanced to the Association by the members directly, or on

their behalf by the manufacturers or other suppliers from whom the members' goods included in the consolidated cars were purchased. The excess of credits over costs is refunded to the members and constitutes their saving in transportation costs realized through the activities of the Association.

VIII.

Funds with which to carry on the activities of the Association are provided by advance payments to the Association by or for the account of its members of sums equivalent to the freight charges which would accrue on each shipment if transported under the prevailing freight forwarder rates applicable to less-carload shipments and without the benefit of carload, truckload, or other volume rates for any portion of the transportation. The collection of such advance payments is effected through freight bills prepared by the Association while the consolidated carloads are in transit and presented to the members for payment immediately upon delivery of the freight. With the moneys thus collected the plaintiff Association pays the inbound freight charges on the less-carload shipments received at Chicago, rail freight on the consolidated carloads, delivery costs at destination and all other expense items incidental to the operation. Any remaining balance is accounted for and distributed to the members receiving the shipments.

IX.

The terms of purchase upon which the members of the Association acquire the property included in the consolidated shipments hereinbefore mentioned, generally provide for delivery of the purchased goods by the seller to the buyer at the seller's factory or other facility at which the shipments originate, and with respect to all shipments the risk of loss and damage while in transit is on the buyer. In some instances the terms of purchase provide that the cost of transportation, or some portion thereof, will be allowed by the seller to the buyer as a credit on the purchase price of the goods. In some cases where such provision for freight allowance has been made, the Association, acting upon instructions from its members, collects from the seller such amounts as have been stipulated in the purchase agreement to be paid or allowed by the seller and the amounts so collected from the seller in each instance are credited by the Association to the respective members who had purchased the goods involved.

X.

By order, dated May 6, 1944, the Interstate Commerce Commission, having under consideration a petition of the Freight Forwarder Institute asking investigation by the Commission to determine whether plaintiffs, Pacific Coast Wholesalers' Association, its directors, officers, or representatives, were operating as a freight forwarder in violation of the provisions of Part IV of the Interstate Commerce Act (56 Stat. L. 284, 49 U. S. C. A. 1001), instituted a proceeding of inquiry and investigation pursuant to the provisions of Section 403(f) of the Interstate Commerce Act for the purpose of determining whether said Association or its directors, officers, or representatives were in violation of any of the provisions of Part IV of the Interstate Commerce Act or any rule, regulation, or requirement issued or established pursuant thereto, and after hearing, if violation was found, to take appro-
66 priate action to prevent continuance of such violation. Plaintiffs, Pacific Coast Wholesalers' Association, Elmer J. Jensen, Percy T. Lyon and Ira C. Lambert, G. A. Olson and Sol Smith, were made respondents in said proceeding, docketed in the files of the Commission as "*Ex Parte 160, Pacific Coast Wholesalers' Association, Investigation of Status.*" Jules H. Ernst and L. A. Lindroth were also made respondents, but Jules H. Ernst has since died and L. A. Lindroth is no longer a Director, officer or representative of the Association.

XI.

A hearing was had in said proceeding, *Ex Parte 160,* at Los Angeles, California, and under date of November 26, 1945, the Commission, by Division 4, issued its report finding the plaintiff Association to be an Association of shippers engaged in consolidating and distributing freight for its members on a non-profit basis for the purpose of securing the benefits of carload, truckload and other volume rates, that such operations are embraced within the exemption provided in Section 402(c) of the Interstate Commerce Act, and that G. A. Olson and Sol Smith are employed by the Association and their activities in such business are for and on behalf of the Association, and that no violation of Part IV of the Interstate Commerce Act has been shown. By order issued November 26, 1945, the Commission, by Division 4, directed the proceeding to be discontinued.

XII.

By order dated July 19, 1946, upon petition of the Freight Forwarders' Institute, the said proceeding, *Ex Parte 160*, was reopened and assigned for further hearing. Further hearings were had at Philadelphia, Pennsylvania; Cleveland, Ohio; Chicago, Illinois, and Los Angeles, California, and on December 18, 1947, the Commission, by Division 4, issued its report and found:

67 "(1) That the association's service in connection with shipments from non-member-consignors to member-consignees and their customers of goods sold on a f. o. b.-destination or delivered-price basis is not a service for the association's members and is not performed on a nonprofit basis within the meaning of section 402(c)(1) of the act.

"(2) That the operations of the association as described in finding 1 are those of a freight forwarder in interstate commerce within the meaning of section 402(a)(5) of the act, and that continuance thereof without a permit is in violation of section 410(a) of the act and therefore unlawful."

and further, that the individual respondents, to the extent that they are parties to such unlawful operations, are likewise in violation of Section 410(a) of the act, and admonished all respondents to discontinue on or before March 4, 1948, the operations found to be unlawful and to notify the Commission on or before March 19, 1948, in writing, under oath, that such operations have been discontinued.

XIII.

Thereafter the said Commission, by orders dated February 24, 1948, May 6, 1948, June 23, 1948, and July 28, 1948, extended the effective dates of the requirements appearing in the report of December 18, 1947, to September 15 and September 30, 1948, respectively. Copies of the report and order of the Commission, dated November 26, 1945, the report of the Commission dated December 18, 1947, and the subsequent orders of February 24, 1948, May 6, 1948, June 23, 1948, and July 28,

68 1948, are attached hereto as Exhibits "A," "B," "C," "D," "E" and "F", respectively, and by reference are incorporated herein as a part hereof.

XIV.

In the report and order of November 26, 1945 [Exhibit "A"], Division 4 of the Interstate Commerce Commission consisted of Commissioners Porter, Mahaffie and Miller,

while in the report of December 18, 1947 [Exhibit "B"], the said division consisted of Commissioners Mahaffie, Rogers and Mitchell.

XV.

On February 17, 1948, plaintiffs filed with the Commission a petition for reconsideration of the report of Division 4, dated December 18, 1947, and for oral argument before the entire Commission and for postponement of the effective date of the requirements of said report, pending further proceedings, a copy of such petition being hereto attached, marked Exhibit "G," and by reference incorporated herein as a part hereof. Thereafter, by order dated June 14, 1948, the Commission denied said petition for reconsideration and for oral argument, copy of such order being hereto attached, marked Exhibit "H," and by reference incorporated herein as a part hereof.

XVI.

All operations and service of the Association as hereinbefore described are performed and rendered exclusively for the benefit of its members and pertain only to shipments of property purchased by, and shipped to, its members. The Association does not offer or render service for hire to or for the benefit of any persons, firms, or corporations who are not members of the Association and all savings in transportation costs accruing from the con-
69 solidation of shipments in carloads and transportation thereof under carload rates are credited and paid to said members.

XVII.

The Commission's findings and conclusions that with respect to shipments of goods purchased by members of the Association on a delivered price or F. O. B. destination basis, the Association renders service for hire to non-member sellers of such goods and that such service is held out to and performed for the general public are contrary to the facts and without support in the record.

XVIII.

Sale of goods on a delivered-price basis is a usual and customary trade practice constituting a part of the commercial transaction whereby the members of the Association purchase and acquire from non-member sellers goods which are included in the consolidated carload shipments assembled and shipped by the Association at Chicago, and

there are and at all times herein mentioned have been included in said consolidated carloads a large number of less-carload shipments of its members consisting of goods purchased by them on a delivered-price basis. The Association performs its service of consolidation without regard to the terms of purchase upon which its members acquired such goods and without previous information or convenient means of ascertaining, prior to the consolidation, which goods of its members to be included therein, have been purchased on a delivered-price basis. If the Commission's report, requirement and order of December 18, 1947, is allowed to stand, the Association will be irreparably damaged in that it will be prevented from carrying on its activities of consolidating all less-carload shipments of its members, and said members and each of them will be irreparably damaged by being deprived of the benefit of savings realized through consolidation and shipment in carloads of goods purchased on a delivered price basis.

As an example of such irreparable damage, Colyear Motor Sales Company, a member of the Association, in the month of June, 1948, received from 38 suppliers a total of 988 less-carload shipments of goods purchased on a delivered price basis, on which a saving of $2,696.37 in transportation cost was realized by the consolidation and shipment of these individual shipments in carloads, all of which was paid to the member by the plaintiff Association. Said shipments were purchased on various terms as follows:

Full freight allowed on shipments valued at $100.00.
All freight over $1.00 per 100 pounds allowed on shipments of 100 pounds or more.
Full freight allowed.
F. O. B. Origin—Full freight allowed on shipments of 200 pounds or more or on shipments valued at $200.00 or more, jobbers' cost.
Prepaid on shipments of 1000 sparkplugs or more.
F. O. B. Destination.
F. O. B. Destination—Freight prepaid.
F. O. B. Origin—Prepaid on 100 pounds.
F. O. B. Lockport—Freight allowed at lowest rate on 100 pounds.
Prepaid on 100 pounds.
F. O. B. Origin—Full freight allowed on 100 pounds.
Full freight allowed on shipments of 200 pounds or more or valued at $100.00 or more.

71 Full freight allowed on shipments of 100 pounds or more.

F. O. B. Cleveland—Prepaid on shipments of 100 pounds or more.

F. O. B. Origin—75 cents per cwt. freight allowance on shipments of 200 pounds or more.

Freight allowed at carload rate from Youngstown, Ohio.

Freight allowed on screws and bolts at $1.20 cwt. (Los Angeles and San Francisco $1.552 cwt.) Cotter pins $1.1372 cwt.; other articles $1.20 cwt.

Freight allowed at one-half L. C. L. rate on shipments of 100 pounds or more.

F. O. B. Origin—$2.79 per 100 pounds freight allowance.

Freight allowed at rates effective Dec. 29, 1947, on shipments of 100 pounds or more.

Freight allowed at $2.30 per cwt.

Another member of the Association, Ducommun Metals & Supply Company, received in the month of June, 1948, 43 shipments from 23 shippers, the saving in transportation costs being $182.86, which amount was paid to the member by the Association. Said shipments were bought on one or another of the following terms:

F. O. B. Chicago—Freight allowed at $2.00 cwt. on 125 pounds or more.

F. O. B. Detroit—Full freight allowed on 100 pounds or more.

F. O. B. cars, Chicago—Full freight allowed.

F. O. B. Athol, Mass.—Freight allowed at $1.43 cwt.

72 F. O. B. cars, Milwaukee—Full freight allowed on 100 pounds or more.

F. O. B. Detroit—Freight allowed at $1.70 cwt.

F. O. B. Cleveland—Freight allowed at $1.20 cwt. plus 3% tax.

F. O. B. Chicago—Full freight allowed.

F. O. B. Cleveland—Freight allowed at $1.10 cwt.

F. O. B. Chicago—Full freight allowed on orders for $50.00 or more net.

F. O. B. Chicago—Freight allowed at 65 cents cwt.

F. O. B. New Castle, Pa.—Freight allowed at $2.00 cwt.

F. O. B. Cleveland—Freight allowed at 35 cents cwt.

F. O. B. Chicago—Freight allowed at $1.50 cwt.

F. O. B. Pekin, Ill.—Freight allowed at $1.50 cwt.
F. O. B. Elyria, Ohio—Full freight allowed on 200 pounds or more at lowest tariff rate.
F. O. B. Brooklyn—Full freight allowed.
F. O. B. Elgin, Ill.—Freight allowed at 65 cents cwt.
F. O. B. Battle Creek—Freight allowed at $2.00 cwt. on 125 pounds or more.
F. O. B. New Brighton, Pa.—Freight equalized with Chicago.
F. O. B. Boston—Full freight allowed on 200 pounds or more at lowest rate.
F. O. B. Greensburg, Pa.—Freight allowed at 77 cents cwt.
F. O. B. Norwood, W. Va.—Freight allowed at 65 cents cwt.

73 By the inclusion of goods purchased on an F. O. B. Destination or delivered price basis in consolidated carloads assembled and shipped by the Association in the manner herein set forth, Association member, Colyear, realized a saving in the transportation cost of said goods in the month of June in the amount of $2,696.37, and the member, Ducommun, realized a saving in the same month in the amount of $182.86, all of which would have been lost to them if the requirements of said Commission's report of December 18, 1947, had been made effective with respect to said shipments. Such loss is typical and representative of the loss and damage which would be sustained in the future by Colyear Motor Sales Company, Ducommun Metals & Supply Company and by other members of the Association, unless said report, requirement and order of the Commission is enjoined, set aside, suspended and annulled.

XIX.

If the report, requirement and order of the Commission of December 18, 1947, is allowed to stand the Association will be compelled on September 15, 1948, to cease and desist from including in the consolidated carloads assembled at Chicago, Illinois, all shipments of goods purchased by its members on a delivered-price basis, and from acting pursuant to its members' instructions in the collection from non-member sellers the transportation costs or freight allowances in whole or in part, agreed upon between such non-member sellers and the member-purchasers, thereby preventing the members of the Association from arranging

lawfully for the consolidation and transportation of freight for themselves, and denying the Association and its
74 members the benefit of the exemption expressed in Section 402(c) of Part IV of the Interstate Commerce Act reading as follows:

"The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a non-profit basis, for the purpose of securing the benefits of carloads, truckload, or other volume rates, * * *."

XX.

If the said report, requirement and order of the Commission of December 18, 1947, becomes effective the members of the plaintiff Association will be deprived of their rights of property, to-wit, their right to consolidate and ship freight for themselves in carload shipments, and the said Association, its directors, officers and representatives, plaintiffs herein, will be prevented from exercising their lawful rights of employment and occupation, all in contravention of the provisions of the Fifth Amendment to the Constitution of the United States.

XXI.

The said report, requirement and order of the Commission will, unless enjoined, annulled, set aside and suspended, cause irreparable injury to plaintiffs and each of them in that said report, requirement and order purport to be a final adjudication of the rights of plaintiffs and each of them to engage in consolidating and distributing freight of the members of the plaintiff Association on a non-profit basis for the purpose of securing the benefits of carload, truckload or other volume rates.

On the matters herein alleged, plaintiffs offer to prove.

75 Wherefore, plaintiffs respectfully pray:

First: That upon the filing of this complaint the presiding Judge of this Court shall call to his assistance in the hearing and determination of this cause two other judges, of whom one at least shall be a circuit Judge;

Second: That process may issue against the defendant, the United States of America;

Third: That after not less than three days' notice to the Interstate Commerce Commission and to the Attorney

General of the United States, as provided by law, a hearing shall be held and a temporary stay or suspension of the said order of the Commission be decreed, pending hearing and determination of plaintiffs' application for a final decree enjoining, annulling, setting aside and suspending said order;

Fourth: That after not less than five days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing shall be held, and a decree be issued staying and suspending the said order of the Interstate Commerce Commission;

Fifth: That upon final hearing of this cause a final decree shall be issued, decreeing that said order of the Commission as aforesaid, is null and void, and is set aside, annulled and suspended, and that its enforcement, execution and operation shall be forever enjoined;

Sixth: That this Court grant to the plaintiffs such other and further relief as by it may be deemed proper in the premises.

Respectfully submitted,

HUGH GORDON,

Hugh Gordon,

GORDON, KNAPP AND HENNESSY,

Attorneys for Plaintiffs,

76 *Duly sworn to by G. A. Olson,*
Jurat omitted in printing. (All in italics.)

77 *Exhibit "A."*

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 160

PACIFIC COAST WHOLESALERS' ASSOCIATION—
INVESTIGATION OF STATUS

Submitted September 27, 1945.

Decided November 26, 1945

Respondent corporation found to be an association of shippers engaged in consolidating and distributing freight for its members on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, and therefore exempt, under section 402(c),

from the provisions of part IV of the Interstate Commerce Act.

Activities in such business of G. A. Olson and Sol Smith, employed by the association, not shown to violate part IV of the Act. Proceeding discontinued.

HUGH GORDON for respondent.

WALTER R. TAYLOR and H. B. ANDERSON for Interstate Commerce Commission.

HARRY C. AMES and WILLIAM MEINHOLD for interveners.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller By Division 4:

Exceptions to the examiner's proposed report were filed by the Freight Forwarder Institute and by counsel for this Commission, and the issues were orally argued.

78 This proceeding is an inquiry and investigation by us, under section 403(f) of the Interstate Commerce Act, instituted upon our own motion, and upon petition of the Freight Forwarder Institute for such inquiry and investigation, by our order, entered December 6, 1944, for the purpose of determining whether the operations of the Pacific Coast Wholesalers' Association, a corporation, hereinafter called the association or the corporation, or of its directors, officers, or representatives are in violation of any provision of part IV of the act, or of any rule, regulation, or requirement issued or established pursuant thereto; and if violation is found to exist, to take appropriate action to prevent continuance of such violation. The corporation, and Elmer J. Jensen, Jules H. Ernst, Percy T. Lyon, Ira C. Lambert, L. A. Lindroth, G. A. Olson, and Sol Smith, directors, officers, and representatives of the corporation, are the respondents.

A hearing was held. The Freight Forwarder Institute and the Pacific Motor Trucking Company intervened. Neither of them presented any testimony. Briefs were filed on behalf of the respondents and of the Freight Forwarder Institute.

Organization of the association.—The association was formed March 27, 1935, by a small group of dealers in automotive parts at Los Angeles, Calif., as a voluntary, unincorporated, nonprofit association, for the purpose of promoting the interest of its members, and to provide a means of assembling, consolidating, forwarding and distributing freight for its members, on a nonprofit basis, and

for the purpose of securing the benefits of carload, truckload, or other volume rates. Prior to its incorporation, its membership was limited by its constitution and by-laws to
79 persons, firms, and corporations engaged in business in the States of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, whose volume of sales at wholesale exceeded 75 percent of their entire sales.

On September 27, 1943, the association was incorporated under the laws of the State of California. The purpose of the corporation, as stated in its articles of incorporation and by-laws, is substantially the same as that of its predecessor-in-interest. Some changes were made in the by-laws. Insofar as they are material here, the principal sections of the by-laws, as amended, provide in substance:

(1) That the corporation will provide and operate such facilities as may be deemed desirable for the efficient and economical handling of freight shipments for its members; compile and maintain tariff files of both common and contract carriers, statistical data, and other information pertaining to the transportation and distribution of freight; employ a competent manager and traffic adviser, together with such other employes as may be required to administer the affairs of the corporation; and retain legal counsel to advise and assist its members with respect to traffic matters.

(2) That the membership is limited to persons, firms, or corporations engaged in business as wholesalers, or in such other business or activity as may be approved by the board of directors, within the States named above, and shall not exceed 50 in number at any one time. The membership is not transferable and may be terminated by voluntary withdrawal or expulsion by the directors for any cause. The initial membership fee paid by each new member is $200.

(3) That in addition to the costs and expenses incidental to the consolidating, forwarding, and handling
80 of shipments for its members, assessments may be levied by the directors from time to time against the members in amounts deemed sufficient to meet overhead, management, and administration expenses.

(4) That for the purpose of providing working capital, each member is required to pay the corporation 5 cents[1] for all freight handled by the corporation for such member, the proceeds to be used as a revolving fund for a

[1] Rates, charges, and costs shown herein are in amounts per 100 pounds.

period not exceeding 2 years, and refunds will be made to the members prorata to the payments made to the fund at such times and in such amounts as the directors determine.

(5) That the principal office shall be in Los Angeles and that branch offices may be established by the directors at any place or places where the corporation is qualified to engage in business.

(6) That the board of directors shall consist of five directors, who shall not receive any stated salary for their services, but by a resolution of the directors, a fixed fee, with or without expense of attendance, may be allowed at each meeting, and that directors may serve in other capacities as officers, agents, employes, or otherwise, and receive compensation therefor.

(7) That the officers of the corporation shall be a president, a vice president, a secretary, and a treasurer; that the corporation may have, at the discretion of the directors, one or more additional vice presidents, assistant secretaries, and assistant treasurers; and that such other officers may be appointed by the board of directors as the business of the corporation may require.

81 *Activities of the association.*—Beginning in 1935 and continuing to the present time, the association has caused to be assembled, consolidated, transported, and distributed, freight from eastern origins consigned to its members in the States mentioned. Believing that it was exempt under the provisions of section 402(c) of part IV of the act, neither the association nor the corporation filed an application for a permit to operate as a forwarder. Section 402(c) provides in part:

> The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, * * *

The issue is here presented whether the activities of the association or the corporation and the manner in which they are conducted are those of a bone fide shippers' association, such as to entitle it to continue operation under the exemption of that section and without a permit.

Method of handling freight under assembling rates.—All shipments are picked up either by motor carriers or by rail carriers at various points in the East and transported in less than truckloads or less than carloads, in line-

haul movement, to Chicago, Ill., and are there delivered to the association's agent, the Transport Terminal Company, hereinafter called the Terminal Company. This agent classifies and consolidates the shipments in carloads and ships by rail to break-bulk points at or near the destination, there the freight is unloaded and delivered to the ultimate consignee by local concerns, or is reshipped
82 by motor carrier or rail carrier to final destinations beyond the break-bulk point. Members of the association instruct the shippers to bill the shipments to the Terminal Company at Chicago, with a notation on each package and on the bill of lading showing the name and address of the ultimate consignee.

Method of settlement of freight charges.—the freight charges from the origin to Chicago are paid to the line-haul carriers by the Terminal Company for account of the association, and are listed as advances by the Terminal Company on its manifest covering the consolidated carload shipment. The manifest and receipted freight bills, together with the Terminal Company's bill for classifying and handling the freight are mailed to the association, which in turn pays the Terminal Company the total amount of the advances and such other charges. Freight charges on the consolidated carload shipments are paid to the rail carriers by the association, and the costs of unloading and distributing are paid to local concerns at destination. The member consignee pays to the association the lowest published forwarder or less-than-carload rate from the origin to destination. Thereafter, the association adjusts with, and refunds to, the members the difference between the freight charges paid to the association and the cost to the latter for assembling, consolidating, transporting, and distributing the freight. These costs include the inbound freight charges to Chicago, the terminal expense at that point, freight charges from Chicago to destination, and terminal and distributing charges at destination, plus additional items charged by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 cents for insurance.
The method of handling traffic is similar to that em-
83 ployed by the forwarders and affords a substantial savings to the members of the association. From the savings an amount of 5 cents per 100 pounds is withheld and placed in a revolving fund and used as working capital, principally in paying freight charges, and at the end of 2 years is refunded to the member. An additional amount

of 1 cent per 100 pounds is retained by the association to pay legal expenses. Compare *Definition Freight Consolidation*, 43 M.C.C. 527.

Growth of membership, volume of traffic handled, and savings to members.—The membership of the association has grown from 8 members in 1935, and 18 in 1939, to 41 members at present. They consist mainly of dealers in automotive parts and hardware, ship builders, and a bridge and dredging company. All of them are receivers of freight, and all but two of them as located in the seven western States. The two excepted firms have branch stores or warehouses on the Pacific coast. No freight is handled for nonmembers, but one similar association is permitted to ship its freight in cars consigned to the respondent association. Generally, only such freight is handled by the association as to which there is sufficient spread between the forwarder, or less-than-carload, rates and the cost of handling and shipping in carloads as to result in a saving to the members. Usually the freight handled falls within the freight forwarders' classification brackets 1, 2, or 3. From Chicago to Los Angeles the bracket 1 rate is $2.12 and the carload rate is $1.10, applicable on such items as iron and steel articles, glassware, and other commodities not exactly similar but taking the same rates. The bracket 2 rate is $2.39 and the carload rate ranges from $1.11 to $1.54, applicable on hundreds of articles, including chemicals, drugs, candy, and
84 builders hardware. The bracket 3 rate is $2.70 and the carload rates range from $1.55 to $1.82, applicable on such items as automobile parts, machinery, articles of paper, etc.

The total tonnage handled by the association, its revenues and expenses, and savings effected for its members in the years shown are as follows:

Year	Tonnage handled Pounds	Revenue	Expenses	Savings
1942	19,650,654	$ 591,198.91	$ 527,388.95	$ 60,522.15
1943	44,070,867	1,349,150.73	1,181,721.84	157,125.28
1944	42,018,232	1,342,880.49	1,184,997.29	136,138.32(1)

(1) Not complete.

Management, accounting, and financial affairs of the Corporation.—The physical operations of the forwarding business of the association and the corporation are, and since their beginnings have been, under the management of G. A. Olson, the general manager of the corporation.

Apparently no written contract has ever been entered into, but the board of directors of the unincorporated association authorized him to make the arrangements for setting up the terminals, and for the assembling, forwarding, and distributing of freight for its members. The board has ratified all agreements so made on behalf of the association, and fixed as his compensation a certain number of cents per 100 pounds for all freight so handled. At first, the compensation was 5 cents and 10 cents, respectively, on first and second bracket freight, and thereafter his compensation on both classes of traffic was fixed at 10 cents. No minute entry is recorded for the latter increase, but there is testimony of record that it was authorized by the directors. Later the amount of compensation was increased to 13 cents.

85 The minutes of the board of directors provide that the corporation shall supervise, manage, and direct the consolidation, transportation, and distribution of less-than-carload freight shipments for its members. These minutes provide also that for all freight shipments so consolidated, the members shall be charged and shall pay to the corporation, as advances to cover costs, such amounts as would be charged for similar services at the prevailing rates of regulated freight forwarders; that all money so collected shall be deposited by the corporation in a fund designated "Freight Account", and be disbursed in payment for carrier charges, insurance, assembling, handling, billing, and all other costs and expenses directly incidental to the transportation service for and on behalf of its members; that payment shall be made of an assessment for overhead, management, and administration, the amount of which for the fiscal year 1944 was fixed at 13 cents for all freight consolidated for its members; and that payment shall be made also of an assessment of 1 cent into the general fund, hereinafter described, to meet legal and other special expenses of the corporation. It is provided further that each member shall pay into a separate "revolving fund" 5 cents for all freight consolidated, for use by the corporation as working capital, to be refunded to the members pro rata periodically at such times and in such amounts as the directors determine, together with any accumulation of funds collected by assessments in excess of the normal requirements of the corporation for overhead, management, and administration expenses; and that payment shall be made to the members in monthly install-

ments of the balance remaining in the "freight account" after all other payments enumerated have been made.

86 The directors appointed and employed G. A. Olson as general manager, and Sol Smith as executive secretary, and fixed as their compensation, including all expenses of maintaining their respective offices, at 13 cents for all freight consolidated by the corporation for its members. From this Sol Smith receives $200 per month, and Olson receives the remainder.

The directors authorized the establishment of two separate bank accounts, one being the freight account, and the other, the general fund. The latter includes the receipts and disbursements of the membership fees, assessment for legal fees, and other incidental items. The directors further authorized Olson and the president of the corporation to withdraw funds from the freight account; and authorized either the president, the vice president, the secretary or executive secretary, or any two acting together, to execute checks or other items drawn on the general fund for and on behalf of the corporation.

The balance sheet of the freight account as of September 30, 1944, includes the following items:

Assets		Liabilities	
Cash in bank	$ 12,552.49	Loans payable to members	$ 10,443.44
Station accounts receivable	130,664.66	Station accounts payable	64,555.17
Other miscellaneous items	2,768.27	Revolving fund	15,426.72
		Undercharge reserve	8,082.65
		Accrued savings due members	465.74
		Assessment for legal expense	792.45
		Miscellaneous items	219.25
Totals	$145,985.42		$145,985.42

87 No audit has ever been made of the freight account. An indemnity bond for $50,000 is carried by the association guaranteeing the faithful performance of duties by Olson and his assistants.

The statement of the general fund of the corporation covering the period December 20, 1943, through January 15, 1945, shows the following receipts, expenditures, and cash in bank:

Receipts		Disbursements	
From freight account	$6,704.00	Legal services	$1,750
Membership fees	1,400.00	Senate hearings	1,000
From unincorporated association	729.62	Traveling expense	1,400
		Dues National Industrial League	110
		Dues Shippers Consolidated Institute	2,500
		Cost of Olson's bond	300
		Cost of freight bond	50
		Miscellaneous items	86.14
		Cash in bank (verified)	1,647.69
Total	$8,833.62		$8,843.83

The items of legal services, Senate hearings, and traveling expenses were mainly in connection with hearings before the Senate Committee and this Commission. The traveling expenses, however, include expenses of other travel by Olson on behalf of the corporation. The membership dues paid to the Consolidated Institute represent payments of $250 per month to that organization for the creation of a fund to promote the interests of the corporation. The Institute consists of the membership of shippers associations similar to the Pacific Coast Wholesalers' Association. Olson was authorized by the directors
88 to represent the corporation in its relations with that Institute and is an officer in the Institute.

Discussion and conclusions.—It is contended by the respondent Freight Forwarder Institute that the association is merely a cloak to cover the freight forwarding services of G. A. Olson, and that through his bureau he is conducting a regular freight forwarding business. If that contention is sustained it would be necessary to find that these services are in violation of part IV of the act, for the reasons, among others, that neither the corporation nor Olson holds a permit, issued by this Commission, authorizing either of them to engage in such service, and neither of them has filed a tariff covering the service.

The evidence clearly establishes that Olson exercises extensive control over the business of the association and occupies a dominating position over its shipping activities; that he has made all arrangements for the assembling,

consolidating, forwarding, and distributing services, prepares the billing and keeps the freight accounts, and is a principal stockholder in the Transport Terminal Company, which consolidates and forwards the shipments at Chicago; that he maintains offices at Los Angeles and elsewhere; and that he employs the personnel engaged in the operations. The directors and officials of the Association have but little knowledge of the actual operations, and have exercised but little, if any, supervision over physical handling of the freight, other than to meet and consider Olson's reports and recommendations and authorize or ratify his undertakings. Their principal interest in the concern appears to be that of providing a means of transporting their goods and receiving the
89 savings in transportation that result from such operations, and they evidence but little interest in Olson's net compensation.

The corporation, however, assumes responsibility for the operation of the business, which is carried on in the name of the corporation. All contracts for assembling, loading, unloading and distributing freight, and for insurance, are in the name of the association and are executed by either its president and secretary, or by Olson as general manager, and approved by the board of directors, and all funds are received and disbursed in its name and with its approval. Olson is employed by the corporation, and his employment is at the will of the corporation. He is paid at the rate of 13 cents per 100 pounds for all freight handled for the members, out of which must be met all expenses directly connected with the assembling, consolidating, forwarding, and distributing the freight, including the salaries of 10 persons at Los Angeles and 2 at Seattle, Wash., the rent for offices in Los Angeles, which consist of seven rooms, and cost of stationery, telephone service, etc. In addition, he receives 2.25 cents per 100 pounds to defray the cost of billing and mailing arrival notices. Based on the 42,018,232 pounds of freight handled in 1944, the compensation of 13 cents received by Olson produced a gross income of $56,623.70. His expenses are not shown, but since he is paid a fixed amount per 100 pounds, out of which he is personally responsible for all expenses, disclosure of the amount of these expenses is not deemed necessary to a determination of the status of the corporation.

As stated, the association contends that its operations are not subject to the Commission's jurisdiction under

part IV of the act, but rather that they are embraced
90 within the exemption provided in section 402(c) thereof. It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates, and that the association is operated on a non-profit basis. These are operations of the character contemplated by the exemption referred to, and may be continued without obtaining authority therefor from this Commission.

We find that respondent corporation is an association of shippers engaged in consolidating and distributing freight for its members, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates; that G. A. Olson and Sol Smith are employed by the Association and that their activities in such business are for and on behalf of the association; and that no violation of part IV of the act has been shown.

The proceeding will be discontinued.

91 ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 26th day of November, A. D. 1945.

EX PARTE 160

PACIFIC COAST WHOLESALERS' ASSOCIATION—

INVESTIGATION OF STATUS

It appearing, That by order dated December 6, 1944, the Commission, by division 4, instituted a proceeding of inquiry and investigation, upon its own motion, pursuant to the provisions of section 403(f) of the Interstate Commerce Act, for the purpose of determining whether in respect of the operations of the Pacific Coast Wholesalers' Association the said association or its directors, officers, or representatives are in violation of any of the provisions of part IV of the said act or any rule, regulation, or requirement issued or established pursuant thereto;

It further appearing, That a hearing has been held, that a full investigation of the matters and things involved has been made, and that the said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission, division 4.

(Seal) W. P. Bartel,
Secretary.

92 *Exhibit "B."*

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 160

PACIFIC COAST WHOLESALERS' ASSOCIATION
INVESTIGATION OF STATUS

Submitted September 22, 1947.

Decided December 18, 1947

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1. Upon further hearing, findings in prior report, 264 I.C.C. 134, reversed.
2. Found that the operations of Pacific Coast Wholesalers' Association are those of a freight forwarder in interstate commerce, and that continuance thereof without a permit is unlawful.
3. Found that other respondents, to the extent they are parties to such freight forwarder operations performed by the association, are likewise in violation of the act.
4. Respondents admonished to discontinue the unlawful operations.

Additional appearances:

Carl I. Wheat for respondent.

James L. Givan and William H. Chamberlain for interveners.

REPORT OF THE COMMISSION ON FURTHER HEARING

Division 4, Commissioners Mahaffie, Rogers, and Mitchell By Division 4:

Exceptions to the report proposed by the examiner were filed by respondents and the Freight Forwarders Institute, and the issues were argued orally.

93 This proceeding was instituted by the Commission as an investigation under section 403(f) of the Interstate Commerce Act, and upon petition of the Freight Forwarders Institute, for the purpose of determining

whether the operations of the Pacific Coast Wholesalers' Association, a corporation, or of its directors, officers, or representatives, are in violation of any provision of part IV of the act, or of any rule, regulation, or requirement issued or established pursuant thereto, and, if any such violation is found to exist, of preventing the continuance thereof.

The issue presented is whether the activities of the association are those of a bona fide nonprofit association of shippers conducted in such manner as to entitle the association to continue operating under the exemption provided in section 402(c) of the act and without a permit.

In the prior report, 264 I. C. C. 134, decided November 26, 1945, division 4 stated, at page 137:

> The member consignee pays to the association the lowest published forwarder or less-than-carload rate from the origin to destination. Thereafter, the association adjusts with, and refunds to, the member the difference between the freight charges paid to the association and the cost to the latter for assembling, consolidating, transporting, and distributing the freight. These costs include the in-bound freight charges to Chicago, the terminal expense at that point, freight charges from Chicago to destination, and terminal and distributing charges at destination, plus additional items charged by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 cents for insurance.
>
> 94 The method of handling traffic is similar to that employed by the forwarders and affords a substantial savings to the members of the association.

It concluded at page 142, that—

> It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates, and that the association is operated on a nonprofit basis. These are operations of the character contemplated by the exemption referred to, and may be continued without obtaining authority therefor from this Commission.

The division there found:

> * * * that respondent corporation is an association of shippers engaged in consolidating and distributing freight for its members, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates; that G. A. Olson and Sol Smith are employed by the association and that their activities in such business are for and on behalf of the association; and that no violation of part IV of the act has been shown.

Thereafter, upon petition of the Freight Forwarders Institute, the proceeding was reopened for further hearing. Such hearings were held at Philadelphia, Pa., Cleveland, Ohio, Chicago, Ill., and Los Angeles, Calif.

To the extent disclosed by the evidence introduced at the original hearing, the association's organization, its
95 activities, and its methods of handling freight under assemblying rates of settling freight charges, and of distributing the so-called "savings", are described in the prior report. The traffic there considered was that on which the charges were paid by the member consignees. The further hearing deals with shipments on which the charges were either prepaid or allowances made therefor, by the non-member consignors, as hereinafter explained.

The membership of the association, as of February 10, 1947, consisted of 38 members having their main offices at Oakland, Los Angeles, San Diego, and San Francisco, Calif., Denver, Colo., Detroit, Mich., Duluth, Minn., Portland, Oreg., Seattle, Spokane and Yakima, Wash., Salt Lake City, Utah, and Green Bay, Wis., with branch stores in Arizona, California, Utah, Colorado, Montana, Idaho, Oregon, Washington, Alaska, and Yukon territory. Each member serves from 1 to 35 towns or cities in the States and territories named and in Nevada, Wyoming, British Columbia and Hawaii.

All of the shipments involved are consigned from eastern origins to the association at Chicago upon instructions of the members, and are there consolidated in carloads and forwarded to destinations or break-bulk points[1] and distributed to members of the association or to their customers in the destination areas. In the past a substantial volume of freight, covered by government bills of lading, was

[1] Phoenix, Ariz., Los Angeles, San Francisco, Portland, Salt Lake City, Seattle, Spokane, and Yakima.

consolidated for the United States Maritime Commission, a non-member, in care of the California Ship Building Corporation at Los Angeles, a member of the association, and "savings" amounting to $24,201.97 were credited to that Commission in 1944 and 1945.

96 The freight charges received by the association on the consolidated traffic, whether from its members or from non-member consignors, are invariably on the basis of the less-than-carload forwarder rate from origin to final destination, plus 3 percent of the total charge, which is added for the purpose of equalizing the association's charge with that of the freight forwarder, including tax.

On further hearing, 14 witnesses testified on behalf of representative non-member consignors that their concerns customarily use the services of the association in making shipments to its members, and either prepay the freight charges or make allowances therefor. In the latter case, the consignee pays the freight charges but is allowed to deduct those charges from the invoice price of the goods. The testimony is supported by voluminous documentary evidence consisting of photostat copies of shipping orders, invoices, bills of lading, freight bills, credit and debit memoranda, routing instructions and various other memoranda.

The bills of lading show the association as consignee, and Chicago as destination, with notations thereon showing the ultimate consignee and destination. They also bear, in the space provided therefor, the notations "prepay", "prepay through", "collect to Chicago and prepay through", or words of similar purport. Most of the freight bills show the charges as having been prepaid. Some of the invoices show deductions for freight allowed; and in other instances where the charges were billed collect, debit memoranda were issued by the member consignees against the consignors for the amount of the charges, or credit memoranda were issued by the consignors in favor of the consignees.

97 In most instances, although the bills of lading are endorsed prepaid, the charges were not actually prepaid to the originating carrier at the time of the shipment. Under a credit arrangement between the consignor and the association, the goods were billed collect to Chicago, and upon arrival the association advanced the charges to the originating carrier for its haul to Chicago and issued the association's prepaid freight bill from the point of origin to the final destination, and collected the charges from the

consignor. If the charges to Chicago actually were prepaid to the originating carrier, the amount paid is credited on the association's freight bill. In other words, the association advances the charges to the consolidating point and collects from the consignor the forwarder's through less-than-carload rate from origin to destination, plus 3 percent of the total freight charge.

At destination the freight is delivered to the member consignees or to their non-member customers without additional charge. Thereafter the member is credited with the difference between the amount paid by the consignor, and the costs borne by the association for transportation, administration, handling, distribution, taxes, etc. No refunds are made to the non-member consignors who paid the charges in the manner stated.

At the Los Angeles hearing, representatives of six member consignees identified the shipping papers, received at the previous hearings, covering certain typical shipments and confirmed the evidence of the consignor witnesses that the charges on such shipments had been either prepaid or allowances therefor made by the non-member consignors. The consolidation of such shipments, including those delivered to customers of the members, and the
98 payment to the members of the "savings" resulting therefrom, is common practice.

By far the greater part of the traffic is billed to the members as sub-consignees. A relatively minor part is billed to customers of the members at the direction of the latter. All transactions relating to the purchase and sale of the customer goods are between the members and the consignors. In some instances the customer is shown as the sub-consignee, and in other instances, the shipment is billed to the members as sub-consignee in care of the customer.

The physical assembling, consolidation, forwarding and distribution of prepaid and allowance freight is the same as that described in the prior report as to collect freight. In fact both prepaid and collect shipments may be made from the same consignor to the same consignee on the same day and in the same car. The same basis of charges applies in all instances, regardless of who pays them, but somewhat different methods of accounting and settlement are followed.

The so-called "savings" are the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent

thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged by the association of 13 cents[2] for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 for insurance, on the other hand.

99 These differences or "savings" are paid to the member consignees, regardless of the fact that the charges were collected from the consignors. Occasionally losses are sustained by the consignees because of the inclusion in the consolidated carloads of goods not subject to carload rates, but generally the association attempts to handle only freight on which a saving may be effected.

The annual report of the association for the year 1945 shows that it had 41 members and consolidated 54,412 less-than-carload shipments aggregating 38,033,341 pounds of freight, constituting 954 mixed carloads, and issued freight bills amounting to $1,195,831.71; from which were deducted transportation charges to Chicago, $253,009.15; handling at Chicago, $45,081.74; railroad charges on pool cars, $628,665.59; billing expenses, $7,606.67; postage on arrival notices, $950.82; unloading pool cars, $21,678.66; store door delivery, $55,826.46; administration, $49,443.33; general fund, $5,325.91, transit insurance, $4,535.38; banking United States Maritime Commission freight bills, $2,216.26; undercharge reserve, $1,842.47; and miscellaneous, $709.89; aggregating $1,076,892.33. The balance, representing "saving", amounted to $118,939.38, averaging 31.29 cents per 100 pounds on all freight consolidated, was returned to the members. These "savings" approximate 9.94 percent of the total amount of the freight bills issued. In December 1944 the number of prepaid shipments approximated 10 percent of the total number consolidated in that month. The corresponding percentage in December 1945 is 9.7.

100 The annual report also shows the receipts and disbursements from the association's general fund[3] for the year 1945, as follows:

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[2] Amounts shown are per 100 pounds.

[3] See pages 138-139 of the prior report for a discussion of the association's "freight account" and "general fund." As stated at page 139, "The latter includes the receipts and disbursements of the membership fees, assessments for legal fees, and other incidental items."

Receipts		Disbursements	
Balance on hand Jan. 1, 1945	$1,173.44	Auditing services	$ 35.00
Membership fees	200.00	Attorney fees and expenses	3,967.88
Assessments from freight accounts	6,084.67	Collector internal revenue	121.25
Loan from revolving fund	2,500.00	Hauling records to I. C. C. hearing	16.48
		Legal printing and transcripts	388.76
		Miscellaneous expense	10.00
		National Industrial League	50.00
		Shippers Consolidators Institute	3,000.00
		Stationery and postage	50.79
		Traveling expenses	1,353.68
	$9,958.11		$8,993.84
		Balance, cash on hand, December 31, 1945	$ 964.27

The evidence clearly shows, and it is admitted by the members of the association and by its general manager, that "refunds" are made to the members of a portion of the freight charges paid by non-member consignors. As the amounts of such "refunds" are not segregated from the total refunds made, the precise amount of "refunds" made from charges paid by the non-members cannot be determined. However, since all freight handled by the association normally is charged the same basis of rates, it is reasonable to assume that the "savings" resulting from prepaid charges would be in approximately the same proportion that the prepaid charges bear to the total freight charges; and on the basis of 10 percent, as reflected by the annual report for 1945 and the association's records for the month of December 1944 and 1945, the "savings" resulting from prepaid charges approximated $11,894 in 1945. This amount does not include the "refunds" or "savings" made out of freight allowances made by non-members consignors. Those figures are not available, but there is evidence that the amount is substantial.

DISCUSSION AND CONCLUSIONS

Section 402(c) of the act, under the protection of which applicant purports to be operating, provides that—

> The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates * * *. (Emphasis supplied.)

The emphasized phrases indicate the two principal questions here presented: (1) On goods sold f.o.b. destination, who is the association serving, the nonmember-consignor or the member-consignee? (2) Does the freight "saving" credited to the member-consignee on such shipments constitute a profit within the meaning of section 402(c) (1)? These matters will be discussed in the order stated.

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Who is being served? Where the goods are sold on a delivered-price or f.o.b.-destination basis, the transportation charges are, as stated, either prepaid or the consignee is allowed to deduct the amount thereof from the invoice price of the goods. That the service is performed for the consignor where he prepays the freight is indicated in *Missouri Portland Cement Co. v. Director General*, 88 I. C. C. 492, and *Alabama Grocery Co. v. Atchison, T. & S. F. Ry. Co.*, 204 I. C. C. 195. In the *Missouri Portland Cement case*, the shipments on which reparation was due had been prepaid and consisted in most instances of goods sold f o. b. destination. As to those sold f. o. b. destination the Commission stated, at page 492, that "Complainant [consignor] is clearly entitled to reparation on those shipments." And that he alone is so entitled in such case is indicated in the *Alabama Grocery case* wherein the Commission said, at page 198, that "a consignee who buy goods f.o.b. destination which are shipped to him prepaid is not entitled to reparation if the rate paid by the shipper is found to be unreasonable."

The question of goods sold f.o.b. destination but shipped collect was considered in *Southern Pac. Co. v. Darnell-Taenzer Lbr. Co.*,[4] 245 U. S. 531, and *Louisville & N. R.*

[4] While it is not so stated in either the Supreme Court's opinion or the Commission's report, the consignees were the ones who paid the freight charges. See the lower court's opinion, *Darnell-Taenzer Lumber Co. v. Southern Pac. Co.*, 221 F. 890, 894. Also the *Missouri Portland Cement case, supra*, pages 493 and 495.

Co. v. Sloss-Sheffield Steel & Iron Co., 269 U. S. 217. As explained by Justice Brandeis at page 235 of the *Sloss-Sheffield case*, it is settled by the *Darnell-Taenzer case*

"that where goods are f.o.b. destination, it is or-
103 dinarily the seller who bears the freight, who suffers from the excessive charges, and who consequently is entitled to sue" for reparation. The facts in the *Sloss-Sheffield case* were that—

> the iron was sold f.o.b. destination; * * * it was shipped to purchasers as consignees on straight bills of lading; * * * it was invoiced and charged on the seller's books at the full delivered price; * * * the consignee physically paid the freight upon acceptance of the delivery; and * * * he was credited with this at the rate specified in the sales contract as a part payment of the purchase price, and remitted only the balance of the purchase price.

The court held that consignor was the one entitled to such reparation as might be due, reasoning as follows:

> When a seller enters a competitive market with a standard article he must meet offerings from other sources. On goods sold f.o.b. destination, the published freight charge from the point of origin becomes, in essence, a part of the seller's cost of production. An excessive freight charge for delivering the finished article affects him as directly as a like charge upon his raw materials. Moreover, the burden of the published freight rate rested upon the consignor under the bill of lading * * * as well as under the contract of sale. The purchaser who paid the freight did so solely as agent for the seller.[5] (Emphasis supplied.)

104 These decisions and the reasoning which underlies them indicate that where goods are sold f.o.b. destination the seller-consignor is the principal for whom the transportation is performed. It follows, therefore, that

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[5] Compare this last sentence with the Commission's report some 19 months earlier in the *Missouri Portland Cement case*. There the situation as to some of the shipments involved was the reverse of that in the *Sloss-Sheffield case*. That is, certain shipments were sold f. o. b. origin and the transportation charges were prepaid, complainant-consignor subsequently collecting them from the consignees. The Commission there concluded (page 496) that in such circumstances "the consignor is acting as an agent and * * * the consignee is the undisclosed principal in the transaction." The principal and agent view so expressed was referred to with approval and followed in *Adams v. Mills*, 286 U. S. 397, 407.

the association is serving the consignor in such case rather than the consignee-member, and this is so whether the shipments move prepaid[6] or collect.[7]

Is the "freight saving" a profit? The meaning of the word "profit" varies with its context. Broadly stated, it is the excess of what is obtained over the cost of obtaining it.[8] In the sense that they result in savings to its members, all of the association's operations are for profit. Compare 50 C. J., page 648, note 49. In the New Hampshire case there noted,[9] it was held that tank cars of a chemical company in which it ships its products are "operated for profit" within the meaning of a law taxing cars so operated, since it saves on containers, otherwise necessary, and gains trade by convenience to customers. But section 402(c) (1) specifically sanctions an association's
105 obtaining for its members "the benefits [savings] of carload * * * rates"; and if the association's operations were confined to obtaining for its members the benefits of carload rates on their own freight, such operations would appear to be excluded from the concept of profit as the word "non-profit" is used in that section.

Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember-consignors, the association is operating for hire and therefore for profit. This conclusion is borne out by the legislative history of section 402, which clearly shows that the handling of nonmembers' shipments at a "saving" to the association members was not contemplated by paragraph (c) thereof. That paragraph is not a true exemption; rather it is a mere clarifying provision.[10] It was recognized that the definition in section 402(a) (5) clearly excludes nonprofit associations of shippers; section 402(c) was inserted merely as a precaution to make absolutely sure that the forwarder definition could not by construction be held to include such associations.[10] The forwarder, on the one hand, and the shipper association, on the other, were distinguished by the fact, inter alia, that the one

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[6] *Missouri Portland Cement* and *Alabama Grocery* cases.

[7] *Darnell-Taenzer* and *Sloss-Sheffield* cases.

[8] *Hentz v. Pennsylvania Co. for Insurance on Lives, etc.*, 134 Pa. 343, 346, 19 A. 685; *Buie v. Kennedy*, 164 N. C. 290, 80 S. E. 445, 446; *Barry v. Bernays*, 162 Mo. A. 27, 30, 141 S. W. 933, 934; *Commissioner of Internal Revenue v. F. J. Young Corp.*, 103 F. 2d 137, 139.

[9] *Vera Chemical Co. v. State*, 78 N. H. 473, 102 A. 463.

[10] Pages 6 and 7 of House Report No. 1172, 77th Congress, 1st Session

engaged in this activity "for profit" whereas the other performed the service "on a nonprofit basis."[11] The
106 forwarder definition itself contained the expression "for compensation" rather than "for profit", and clearly it was in this sense that Congressman Wolverton used the words "for profit" when offering the explanation quoted in the footnote.[11] By way of distinguishing them from the "for profit" operation of freight forwarders, the shipper-association activities contemplated by section 402(c) (1) were referred to as being of a nonprofit character, that is operations not for compensation or for hire.

In view of the foregoing, we conclude that the service performed by the association for nonmembers is not a nonprofit service but one performed for hire, and, being for hire, it is not within the protection of section 402(c) (1) of the act.

The association contends, however, that our conclusion here is controlled by the decision in *Woitishek's Common Carrier Application*, 42 M.C.C. 193. Woitishek's primary business was that of a dealer in building materials and mining machinery and supplies. His motor transportation activities were conducted as an incident to and in furtherance of such primary business. He was found to be a private carrier of property by motor vehicle within the meaning of section 203(a)(17) of the act. The Commission, division 5, stated that the question whether a given motor service is private or for-hire carriage is to be determined on the basis of the operator's primary business. This principle was stated upon a consideration of the common, contract, and private carrier definitions in sections 203(a) (14), (15), and (17) of the act, particularly the reference in the private carrier definition to whether the transportation is "in furtherance of any commercial enterprise." There is no like reason for application of the "primary business" test in construing section
107 402(c)(1). The *Woitishek case* is therefore not in point, and our determination here of an issue under

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[11] "One who *for profit* engages in the business of serving the public as a forwarder of property in interstate or foreign commerce, if otherwise embraced within the definition of 'freight forwarder,' would not be excluded therefrom by disavowal of either an undertaking 'to transport' or an undertaking to assume a common-carrier status." (Emphasis supplied) 87 Cong. Rec. 8217.

"* * * the regulation will not apply to the operations of a group or association of shippers in consolidating or distributing freight for the members thereof on a *nonprofit basis*." (Emphasis supplied) Id.

section 402(c)(1) is not controlled by the conclusion stated in that report.

As noted, the association performs service in connection with shipments to customers of its members as well as to the members themselves. At the argument, counsel for the Freight Forwarders Institute asked that a finding be made as to the lawfulness or otherwise of the association's service in connection with shipments to customers of its members. Shipments were made from nonmember consignors to such customers on a prepaid basis and on a freight-allowed basis. As in the case of shipments to the members themselves the transportation charges were not borne by the members but by the nonmember-consignors. The transportation savings on such shipments were claimed by and paid to the members whose customers received the respective shipments. In these instances, as well as in the case of shipments to the members, the association's service is performed for nonmembers; is thus a service for-hire; and, being for-hire, is not within the protection of section 402(c)(1) of the act.

The Freight Forwarders Institute contends not only that the association's activities are not of the character contemplated by section 402(c)(1) but that its operations are those of a freight forwarder within the meaning of the definition contained in section 402(a)(5) of the act. It is clear that the physical aspects of these operations conform with those of a freight forwarder. It assembles less-than-carload shipments at Chicago, consolidates them into carloads, ships the carload lots to western break-bulk points, performs or provides for the performance of
108 break-bulk and distributing operations with respect to such consolidated shipments, and utilizes for such transportation the services of rail and motor carriers subject to parts I and II of the act. To characterize these operations as freight forwarder service it is necessary to find, in addition, (1) that the service is held out to and performed for the general public and (2) that the association assumes responsibility for the transportation of such property from point of receipt to point of destination.

As noted, the association serves 38 wholesalers, principally of hardware and automotive supplies, located at the principal cities in Pacific coast and intermountain territory. As will be seen from the tonnage figures set forth above, in serving the wholesalers and their eastern supplies, it handles a substantial transcontinental movement of these commodities.

It is insisted in respondents' behalf that the association does not serve the general public. The association serves not only its 38 members but also that part of the public from which those members purchase their supplies.[12] While the shippers thus referred to are not all the public, it is to be remembered that no man serves all of the public. *Terminal Taxicab v. Dist. of Col.*, 241 U. S. 252. In our opinion the facts stated warrant the conclusion that the association's service is held out to and performed for the general public.

The association does not specifically assume responsibility for transportation of the property moving in its service. This fact does not, however, preclude a finding that such responsibility is assumed. When the bill which became part IV of the act was under consideration in the House of Representatives, the ranking minority member of the House Committee on Interstate and Foreign Commerce explained the intendment of the proposed forwarder definition, observing that an assumption of responsibility would be imputed to one whose operations conform in all other respects to those of a freight forwarder.[13] Since the association's service has been held out to and performed for the general public, it must be held to have assumed the burdens incident thereto, among which is responsibility to the shipper for the safe transportation of its property. We conclude that the association does assume responsibility for the transportation of shipments moving in its service. *Universal Transcontinental Corp. F. F. Application*, 260 I.C.C. 521, 523.

109

It follows that the association's operations fall within the definition of a freight forwarder. The question whether its operations are within the prohibition of section 411 (b) of the act is not before us in this proceeding, and we express no view on that question.

Upon consideration of the facts of record on further hearing, we find:

(1) That the association's service in connection with shipments from nonmember-consignors to member-consignees and their customers of goods sold on a f.o.b.-destination or delivered-price basis is not a service for

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[12] Compare *Philips Packing Co., Inc., Common Carrier Application*, 260 I. C. C. 297 and *Toussaint Contract Carrier Application*, 41 M. C. C. 459. The carriers there involved served that part of the public having need therefor by reason of purchases from certain suppliers there involved.

[13] 87 Cong. Rec. 8217, quoted in part in footnote 11, *supra*.

the association's members and is not performed on a non-profit basis within the meaning of section 402(c)(1) of the act.

110 (2) That the operations of the association as described in finding 1 are those of a freight forwarder in interstate commerce within the meaning of section 402(a)(5) of the act, and that continuance thereof without a permit is in violation of section 410(a) of the act and therefore unlawful.

(3) That respondents Elmer J. Jensen, Jules H. Ernst, Percy T. Lyon, Ira C. Lambert, L. A. Lindroth, G. A. Olson, and Sol Smith, to the extent that they are parties to such unlawful operations, are likewise in violation of section 410(a) of the act.

Respondents will be expected (a) to discontinue on or before March 4, 1948, the operations herein found to be unlawful, and (b) to notify the Commission on or before March 19, 1948 in writing under oath that such operations have been discontinued.

By the Commission, division 4.

W. P. Bartel,
(Seal) *Secretary.*

111 *Exhibit "H."*

ORDER

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 160

PACIFIC COAST WHOLESALERS' ASSOCIATION

INVESTIGATION OF STATUS

In the Matter of Telegraphic Request by Respondents for Postponement of the Effective Dates of the Requirements of Division 4.

Present: Charles D. Mahaffie, Commissioner, to whom the above entitled matter has been assigned for action thereon.

It appearing, That on December 18, 1947, Division 4 made and filed a report in the above-entitled proceeding, containing its findings of fact and conclusion thereon, and requiring respondents (a) to discontinue on or before March 4, 1948, the operations therein found to be unlawful, and (b) to notify the Commission on or before March 19, 1948, in writing under oath that such operations have been discontinued;

It further appearing, That upon request of respondents the effective dates of said requirements have from time to time been postponed to August 6 and 30, 1948, respectively;

And it further appearing, That respondents, by telegram, request further postponement of such requirements, and good cause appearing:

112 *It is ordered,* That the effective date of said requirements be, and they are hereby, further postponed from August 6 and 30, 1948, respectively, to September 15 and 30, 1948, respectively.

Dated at Washington, D. C., this 28th day of July, A. D. 1948.

By the Commission, Commissioner Mahaffie.

W. P. BARTEL
Secretary

(Seal)

[Stamped]: Received August 2, 1948, 2:08 P. M.

113 In United States District Court

(File Endorsement Omitted)

(Title Omitted)

Order designating judges as required by 28 USC 2325—Filed Sept. 15, 1948

Whereas there has been filed in this court and assigned to Judge William C. Mathes an action entitled "Pacific Coast Wholesalers' Association, a corporation, and Elmer J. Jensen, Percy T. Lyon, Ira C. Lambert, G. A. Olson and Sol Smith, Plaintiffs v. United States of America, Defendant," and numbered Civil No. 8588-WM, and

Whereas, Judge Mathes has advised the Chief Judge of the United States Court of Appeals for the Ninth Circuit of the pendency of this action,

Now, Therefore, I designate Circuit Judge Albert Lee Stephens and District Judge Leon R. Yankwich to sit in such action.

Dated: September 4, 1948.

WILLIAM DENMAN
Chief Judge, United States Court of Appeals for the Ninth Circuit

114 In United States District Court

(Title Omitted)

Order setting cause for hearing—Sept. 29, 1948

It is ordered that this cause be heard in Court Room No. 5 on Oct. 26, 1948, 10 AM.

115 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Motion for intervention as of right—Filed Oct. 12, 1948

And now to wit, this 12th day of October, A. D., 1948, comes Freight Forwarders Institute, a nonprofit association with place of business at Colorado Building, Washington, D. C., files this motion to intervene as of right under Rule 24A of the Federal Rules of Procedure and under the provisions of Title 28 U. S. C. Section 45a (Judicial Code, sections 212, 213) and section 2323, Chapter 157, Title 28, as a "party in interest to the proceeding before the (Interstate Commerce) Commission, in which the order or requirement" was made which forms the basis for the complaint in the above-entitled cause.

HARRY C. AMES

Harry C. Ames

Attorney for Freight Forwarders Institute

Of Counsel:

FRANK D. CATLIN

HENRY W. CATLIN

By Henry W. Catlin

116 (Affidavit of service by mail omitted)

117 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Pleading to accompany motion to intervene—Filed Oct. 12, 1948

And now to wit, this 12th day of October, A. D., 1948, comes Freight Forwarders Institute, and in support of its motion to intervene as of right, filed herewith, states: That its membership consists of freight forwarders subject to complete regulation by the Interstate Commerce

Commission under Part IV of the Interstate Commerce Act (Title 49, U. S. C.); that such members are in direct competition with plaintiffs with respect to all transportation undertakings of the latter; that plaintiff association is and has been operating under an alleged exemption of the governing statute which operations are and have been unlawful; and that intervener supports in full the findings and order of the Interstate Commerce Commission and wishes to adopt as its own the answer made by defendant, the United States of America.

HARRY C. AMES
Harry C. Ames
Attorney for Freight Forwarders Institute

Of Counsel:
FRANK D. CATLIN
HENRY W. CATLIN
By J. Henry W. Catlin

118 (Affidavit of service by mail omitted)

119 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Intervention of Interstate Commerce Commission—Filed Oct. 14, 1948

To the Honorable Judges of said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (28 U. S. C. 45 (a), now 28 U. S. C. 2323, we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel

H. L. UNDERWOOD
H. L. Underwood
Attorney
For Interstate Commerce Commission

120 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Answer of Interstate Commerce Commission—Filed Oct. 14, 1948.

The Interstate Commerce Commission, intervening defendant herein, hereinafter called the Commission, for answer to the complaint filed in this cause, says:

I.

The Commission admits the allegations contained in paragraph I of the complaint, except the allegation that plaintiff, Pacific Coast Wholesalers' Association, is a non-profit corporation, which it denies; and in this regard it alleges that plaintiff Association, as to a part of its
121 operations, is functioning as a freight forwarder for profit, without having obtained a permit for such operation and that as to such operations it is in violation of Section 410 (a) of the Interstate Commerce Act, 49 U. S. C. 1010 (a).

II.

The Commission admits the allegations of paragraph II of the complaint.

III.

The Commission admits that this Court has jurisdiction of this suit.

IV.

The Commission admits the allegations of paragraph IV of the complaint, and in this connection avers that the dates for compliance with the requirements of the order of the Commission have been further postponed to October 31, 1948, and November 15, 1948, respectively.

V.

Answering paragraph V of the complaint, the Commission avers that it is without knowledge or information as to the present membership of the plaintiff Association, but admits that as of February 10, 1947, there were 38 members. It admits that the members are engaged in business in there are members which have main offices in other states, the states specified in said paragraph V, but avers that to wit, Minnesota, Wisconsin, Michigan, and Colorado, and branch stores in Colorado, Montana, Idaho, Alaska, and

Yukon Territory, and that each member serves from one to 35 towns or cities in the states and territories named and in Nevada, Wyoming, British Columbia and Hawaii.

VI.

The Commission admits the allegation of para-
122 graph VI of the complaint.

VII.

The Commission admits the allegations of paragraph VII of the complaint, except that it does not admit that in its operations the Association acts exclusively for its members but avers that it also acts for non-members. Further, it is without knowledge or information as to whether the Association handles and prosecutes all claims for loss and damage on behalf of its members.

VIII.

The Commission admits the allegations of paragraph VIII, except such as are in conflict or inconsistent with its findings, statements and conclusions in the reports in Ex-Parte No. 160.

IX.

The Commission admits the allegations of paragraph IX, except such as are in conflict or inconsistent with the findings, statements and conclusions contained in its reports in Ex Parte No. 160.

X.

The Commission admits the allegations of paragraph X, except the allegation with respect to death of Jules H. Ernst and that L. A. Lindroth is no longer a Director, officer or representative of the Association as to which it is without knowledge or information.

XI.

The Commission admits the allegations of paragraph XI, but respectfully refers the Court to its report and order of November 26, 1945, for full information as to its findings and conclusions and the contents of its order.

123 XII.

The Commission admits the allegations of paragraph XII, but respectfully refers the Court to the report and order issued by it, for full information as to its findings, conclusions and the requirements thereof.

XIII.

The Commission admits the allegations of paragraph XIII, but alleges that a further extension has been granted to October 31, 1948, and November 15, 1948, respectively.

XIV.

The Commission admits the allegations of paragraph XIV of the complaint.

XV.

The Commission admits the allegations of paragraph XV of the complaint.

XVI.

The Commission denies the allegations of paragraph XVI insofar as it alleges that all operations and service performed by the Association are performed and rendered exclusively for the benefit of its members and avers that its operations include operations and service for non-members.

The Commission also denies the allegation that all shipments of property handled by the Association are shipped to its members and avers that some shipments are made direct to customers of members.

It further denies the allegation that the Association does not offer or render service for hire to or for the benefit of those who are non-members of the Association and avers that such service is offered and rendered to non-members.

It admits that the members of the Association benefit from its operations and that all savings in transpor-
124 tation costs are credited and paid to said members; it avers that such savings include those on transportation costs paid not by the members but paid and borne by non-members.

XVII.

The Commission denies the allegations contained in paragraph XVII of the complaint.

XVIII.

The Commission for answer to the allegations of paragraph XVIII of the complaint, submits that said allegations are argumentative and speculative and are not such as to require answer. Nevertheless, it denies that the requirement and order of the Commission will cause irreparable or any damage to the association or its members against which it is entitled to relief: on the contrary, the Commission avers that the alleged damage, if any, will ensue be-

cause of the present unlawful operations and practices of the association and its members, in failing to observe and comply with the provisions of the applicable law. Further that any predicted loss of "savings" to the members would consist in substantial part of savings on transportation charges paid or borne by non-members which the member was not entitled to receive.

XIX.

The Commission, answering paragraph XIX, respectfully refers the Court to its report and order for full information as to the contents thereof.

It denies that its order and requirement deny the Association or its members, any right or benefit to which it or they are lawfully entitled. It specifically denies that the said association or its members are entitled to the benefit of Section 402 (c) of Part IV of the Interstate Com-
125 merce Act, 49 U. S. C. 1002 (c).

XX.

The Commission denies the allegations of paragraph XX of the complaint.

XXI.

Answering paragraph XXI, the Commission denies that its said order referred to in said paragraph will cause irreparable injury to plaintiffs and each of them, or any injury for which they could be afforded relief and avers such asserted damage will ensue due to the present unlawful practices and operations of the Association and its members in failing to observe and comply with the applicable law.

XXII.

Further answering the allegations of the complaint, the Commission avers that in the proceedings referred to in the complaint, the parties thereto, including the plaintiffs herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for de-

termination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiffs
126 herein, its said report and order of December 18, 1947, annexed to and made part of the complaint herein as Exhibit "B"; that said report and order included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as afore said, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its order of December 18, 1947, was based.

The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order of December 18, 1947, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the complaint. The Commission denies that its said order is unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said complaint, or for any other reason or reasons. The Commission denies that its said order causes, or will cause, plaintiffs either irreparable damage or any damage if said report and order are not enjoined.

127 Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order referred to and made part of the complaint herein as Exhibit "B".

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,

H. L. UNDERWOOD
By: H. L. Underwood
Attorney

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel
Of counsel.

October ...., 1948.

128 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Answer of the United States—Filed Oct. 19, 1948

Now comes the United States of America, defendant in the above-styled cause, and in response to the bill of complaint filed herein answers and says:

1. Defendant admits the jurisdiction of this Court over the cause of action and the parties thereto to the extent, if any, that the report of the Interstate Commerce Commission involved herein constitutes a judicially reviewable order; but denies that the review here sought is of such an order.

2. Defendant admits and alleges that the Interstate Commerce Commission, in the due course of administrative procedure, wherein plaintiffs had a full and fair hearing and opportunity to and did submit evidence and argument, duly rendered a certain report of December 18, 1947 (Exhibit B to complaint), pursuant to a proceeding of inquiry and investigation theretofore instituted upon its own motion.

3. Defendant admits the fact of filing by plaintiff of petition for reconsideration of said report (Exhibit G to
129 complaint), and that the Commission made the order of July 28, 1948 (Exhibit H to complaint); but denies that said order denied said petition for reconsideration, as alleged in paragraph XV of the complaint.

4. Defendant alleges that plaintiffs' suit is premature for want of compliance with the requirements of Section 17(9) of the Interstate Commerce Act, as amended (49 U.S.C. 17(9)).

5. Defendant alleges that the said report of the Commission of December 18, 1947, is not a reviewable order and imposes no requirements or obligations upon plaintiffs; but merely constitutes an expression of the opinion of the Commission with respect to the propriety of plaintiffs' conduct, and an admonition to discontinue the conduct regarded as unlawful by the Commission and an expression of the Commission's expectation that plaintiffs will discontinue such conduct and notify the Commission in writing, under oath, that such conduct has been discontinued. Defendant alleges that if and when a mandatory order is made by the Commission requiring plaintiffs to cease and desist from such conduct, plaintiffs will have an adequate opportunity for judicial review of such order; and that if and when any civil or criminal proceedings should be instituted against plaintiffs in the event that they do not discontinue such conduct, defendants would have adequate relief in such proceedings if their contentions are correct that the Commission's views expressed in the said report of December 18, 1947, are erroneous.

6. Defendant alleges that in its said report of December 18, 1947, the Commission found as a fact that plaintiff association performs service for non-member consignors and non-member consignees, and concluded that by reason of these facts the plaintiff association is not exempt from regulation under Part IV of the Interstate Commerce Act by virtue of the exemption provisions of Section 402(c)(1) of the Act (49 U.S.C. 1002(c)(1)), but that the operations of said plaintiff are those of a freight forwarder in interstate commerce within the meaning of Section 402(a)(5) (49 U.S.C. 1002(a)(5)), and that continuance thereof without a permit is in violation of Section 410(a) of the Act (49 U.S.C. 1010(a)).

130 7. Defendant alleges that the views and opinions of the Commission voiced in its said report of December, 18, 1947, are in accordance with law and sound public policy; and that the said Commission, as the expert agency established by law to regulate transportation, may with propriety apply the regulatory statutes administered by it to the actual acts and transactions performed in the course of transportation which in fact takes place, and may disregard fictitious and private computations and negotiations and agreements between buyers and/or sellers of goods entered into and/or performed for the purpose of maintaining a so-called "delivered price basing-point system."

Defendant alleges that such delivered price basing point systems are generally employed as a device for price fixing in restraint of trade and the elimination of competition, and that such systems involve the payment of fictitious or phantom freight by the consuming public, which amounts so computed for fictitious or phantom freight charges do not represent payment or compensation to a carrier for transportation service actually performed. Defendant alleges that the Commission may with propriety disregard accounts and transactions involving such fictitious or phantom freight and may regulate, in accordance with its statutory authority, the actual transportation in fact performed.

8. Except as hereinabove expressly admitted, defendant denies each and every allegation in the complaint contained. Defendant specifically denies that any constitutional right of plaintiffs is involved or affected in any way by the Commission's report, and denies that irreparable injury, or any legal injury at all, will result if the said report is not nullified by this Court.

WHEREFORE, defendant prays that the relief prayed for by plaintiffs be denied and the suit dismissed, plaintiffs to pay the costs.

HERBERT A. BERGSON
Assistant Attorney General

EDWARD DUMBAULD
Special Assistant to the Attorney General

JAMES M. CARTER
United States Attorney

CLYDE C. DOWNING
Assistant United States Attorney

JAMES C. R. McCALL, JR.
Assistant United States Attorney

By: JAMES C. R. McCALL, JR.

James C. R. McCall, Jr.
Assistant U. S. Attorney
Attorneys for Defendant United States of America

131 In United States District Court

(Title Omitted)

Minute entry of trial—Oct. 26, 1948

For hearing motion of Freight Forwarders Institute, a non-profit association, to intervene; and for trial; Hugh Gordon, Esq., appearing as counsel for plaintiffs; James C. R. McCall, Ass't U. S. Att'y appearing as counsel for U. S. A.; Edward Dumbauld, Spec. Ass't to Att'y Gen'l, also appearing as counsel for U. S. A.; H. L. Underwood, Esq., appearing as counsel for Interstate Commerce Commission; Frank D. Catlin and Giles Morrow, Esqs, appearing as counsel for Freight Forwarders Institute, Attorney Morrow being admitted for purpose of this case only;

Said motion of Freight Forwarders Institute to intervene is presented and granted. On motion of Attorney McCall, Court orders that Attorneys Dumbauld and Underwood are admitted to practice in this Court for the purpose of this case only.

At 10:30 AM Attorney Gordon makes presentation of plaintiffs' position. At 10:55 AM Attorney Dumbauld addresses the Court on question of jurisdiction of this Court and the finality of the order. Attorney Underwood states the views of the Commission on the order in question. Discussion ensues. At 11:30 AM Attorney Gorden argues further for plaintiff.

At 12:08 PM court recesses to 1:30 PM. At 1:40 PM court reconvenes herein and all being present as before, Attorney Dumbauld argues for the Gov't. At 2:20 PM Attorney Underwood argues for the Interstate Commerce Commission.

132 At 2:40 PM Attorney Morrow argues for intervenor Freight Forwarders Institute. At 3 PM Attorney Gordon argues in rebuttal.

Cause is submitted on facts and record of the hearing before the Interstate Commerce Commission to be filed. Attorney Underwood states that the Commission will be asked to extend time within which plaintiffs must comply with the order of the Commission.

Plaintiff is allowed five days to complete the record.

133 In the District Court of the United States
Southern District of California
Central Division
No. 8588—WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH,
PLAINTIFFS,
v.
UNITED STATES OF AMERICA,
DEFENDANT,
AND
INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE,
INTERVENORS,

Before Stephens, Circuit Judge, and Yankwich and Mathes, District Judges:

Opinion—Filed Jan. 24, 1949

MATHES, District Judge:

Plaintiffs, a nonprofit California corporation, and
134 individuals comprising its board of directors, seek by this action "to enjoin, set aside, suspend and annul a certain report, requirement and order of the Interstate Commerce Commission." Jurisdiction of this court is invoked under 28 U. S. C., § 1336 [formerly § 41 (28).]

Hearing and determination of the cause by "a district court of three judges" is required by 28 U. S. C., § 2325 [formerly § 47], and this court was accordingly designated by the Chief Judge of the Circuit pursuant to 28 U. S. C., § 2284.

The challenged action of the Commission followed "an inquiry and investigation * * * under § 403(f) of the Interstate Commerce Act, instituted * * * for the purpose of determining whether the operations of the Pacific Coast Wholesalers' Association, a corporation, * * * or of its directors, officers, or representatives are in violation of any provision of part IV of the act, or of any rule, regulation or requirement issued or established pursuant thereto * * *" [264 I. C. C. 134].

In the language of the Commission's report of November 26, 1945 [264 I. C. C. 134], "the association was formed

March 27, 1935, by a small group of dealers in automotive parts at Los Angeles, California, as a voluntary unincorporated, non-profit association, [and was later incorporated] for the purpose of promoting the interest of its members, and to provide a means of assembling, consolidating, forwarding and distributing freight for its members, on a nonprofit basis, and for the purpose of securing the benefits of carload, truckload, or other volume rates. * * * No freight is handled for nonmembers * * * Believing that it was exempt under the provisions of § 402(c) of part IV of the act, neither the association nor the corporation filed an application for a permit to operate as a forwarder."

The report of November 26, 1945, concluded: "It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates, and that the association is operated on a nonprofit basis. These are operations of the character contemplated by the exemption referred to, and may be continued without obtaining authority therefor from this Commission." Thereupon the Commission entered an order: "That this proceeding be, and it is hereby, discontinued."

Thereafter, upon petition of Freight Forwarders Institute, as intervenor, the proceedings were reopened and further hearings held. On December 18, 1947, a "Report of the Commission on Further Hearing" was filed [269 I. C. C. 504], setting aside the report of November 26, 1945.

136 In the second report, the Commission found, inter alia:

"All of the shipments involved are consigned from eastern origins to the association at Chicago upon instructions of the members, and are there consolidated in carloads and forwarded to destinations or breakbulk points and distributed to members of the association or to their customers in the destination areas * * *

"The bills of lading show the association as consignee, and Chicago as destination, with notations thereon showing the ultimate consignee and destination. They also bear, in the space provided therefor, the notations 'prepay', 'prepay through', 'collect to Chicago and prepay through', or words of similar pur-

port. Most of the freight bills show the charges as having been prepaid. Some of the invoices show deductions for freight allowed; and in other instances where the charges were billed collect, debit memoranda were issued by the member consignees against the consignors for the amount of the charges, or credit memoranda were issued by the consignors in favor of the consignees.

137 "In most instances, although the bills of lading are endorsed prepaid, the charges were not actually prepaid to the originating carrier at the time of shipment. Under a credit arrangement between the consignor and the association, the goods were billed collect to Chicago, and upon arrival the association advanced the charges to the originating carrier for its haul to Chicago and issued the association's prepaid freight bill from the point of origin to the final destination, and collected the charges from the consignor. If the charges to Chicago actually were prepaid to the originating carrier, the amount paid is credited on the association's freight bill. In other words, the association advances the charges to the consolidating point and collects from the consignor the forwarder's through less-than-carload rate from origin to destination, plus 3 percent of the total freight charge.

"At destination the freight is delivered to the member consignees or to their non-member customers without additional charge. Thereafter the member is credited with the difference between the amount paid by the consignor, and the costs borne by the association for transportation, administration, handling,
138 distribution, taxes, etc. No refunds are made to the non-member consignors who paid the charges in the manner stated.

"* * * The consolidation of such shipments, including those delivered to customers of the members, and the payment to the members of the 'savings' resulting therefrom, is common practice.

"By far the greater part of the traffic is billed to the members as sub-consignees. A relatively minor part is billed to customers of the members at the direction of the latter. All transactions relating to the purchase and sale of the customer goods are between the members and the consignors * * *

"The so-called 'savings' are the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged
139 by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 cents for insurance, on the other hand.

"These differences or 'savings' are paid to the member consignees, regardless of the fact that the charges were collected from the consignors. Occasionally losses are sustained by the consignees because of the inclusion in the consolidated carloads of goods not subject to carload rates, but generally the association attempts to handle only freight on which a saving may be effected * * *

"The evidence clearly shows, and it is admitted by the members of the association and by its general manager, that 'refunds' are made to the members of a portion of the freight charges paid by non-member consignors."

The Commission thereupon concluded:

"(1) That the association's service in connection with shipments from nonmember consignors to member-consignees and their customers of goods sold on a f. o. b. destination or delivered-price basis is not a service for the association's members and is not performed on a non-profit basis within the meaning of § 402(*c*)(1) of the act;

140 "(2) That the operations of the association as described * * * are those of a freight forwarder in interstate commerce within the meaning of § 402(a)(5) of the act, and that continuance thereof without a permit is in violation of § 410(a) of the act and therefore unlawful; [and]

"(3) That respondents [the individuals] to the extent that they are parties to such unlawful operations, are likewise in violation of § 410(a) of the act."

The "requirements" of the Commission accompanying the report of December 18, 1947, read:

"Respondents will be expected (a) to discontinue on or before March 4, 1948, the operations herein found to be unlawful, and (b) to notify the Commission on or before March 19, 1948 in writing under oath that such operations have been discontinued."

The Commission has construed the somewhat equivocal verb phrase "will be expected" to connote a command. [cf. *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 143-144 (1939).]

The petition for reconsideration having been denied, respondents commenced this action on August 30, 1948 to set aside the above quoted requirements. The "effective
141 dates of the aforesaid requirements" have been postponed from time to time by order of the Commission, and now await final judgment herein. Both the Commission and Freight Forwarders Institute have intervened on the side of the defendants and have filed answers and briefs.

The Commission's action in question was taken under the authority of § 403(f) of the Interstate Commerce Act, as amended, [49 U. S. C., § 1003(f)]:

"The Commission may investigate, either upon complaint or upon its own initiative, whether any freight forwarder has failed to comply with any provision of this chapter * * * and, after notice and hearing, take appropriate action to compel compliance therewith."

Jurisdiction to set aside a "requirement" of the Commission is conferred upon this court in § 17(9) of the Act [49 U. S. C., § 17(9)]:

"When an application for rehearing * * * or reconsideration of any * * * requirement * * * shall have been denied * * * by the Commission * * *, a suit to enforce, enjoin, suspend, or set aside such * * * requirement, in whole or in part, may be brought in a court of the United States under those provisions of law ap-
142 plicable in the case of suits to enforce, enjoin, suspend or set aside orders of the Commission, but not otherwise."

See: [28 U. S. C., § 1336 (formerly § 41(28);
cf. *Columbia Broadcasting System* v. *United States*, 316 U. S. 407, 417 (1942); *United States* v. *Los Angeles R. R.*, 273 U. S. 299, 309-312 (1927).]

However, as said in *Rochester Tel. Corp.* v. *United States, supra,* 307 U. S. 125, 139-140 (1939), "the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commissioner's order becomes incontestable."

The full record before the Commission has been brought here, and it appears beyond dispute that there is evidence of substance to support the Commission's findings of fact [*Louisiana etc. Ry. Co.* v. *United States,* 257 U. S. 114, 116 (1921); *I. C. C.* v. *Union Pacific,* 222 U. S. 541, 547-548 (1912)]. "The findings in the report being thus accepted as true, there is left only the inquiry whether they give support to the conclusion * * * The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." [*Miss. Valley Barge Co.* v. *United States,* 292 U. S. 282, 286-287 (1934).]

143 The courts will not consider the wisdom of the "requirement" in question, or substitute their judgment for that of the Commission [*Assigned Car Cases,* 274 U. S. 564, 580 (1927); *New England Divisions Case,* 261 U. S. 184, 204 (1923); *I. C. C.* v. *Illinois Central R. R.* 215 U. S. 452, 470 (1910)]. So the precise question here is whether the facts found by the Commission show respondent Pacific Coast Wholesalers' Association to be a "freight forwarder" within the meaning of § 402 of the Interstate Commerce Act [49 U. S. C., § 1002]. Section 402(a)(5) provides that:

> "The term 'freight forwarder' means any person which (otherwise than as a carrier subject to chapter 1, 8, or 12 of this title) holds itself out to the general public to transport or provide transportation of property, * * * for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of breakbulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination,
> 144 and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to chapter 1, 8 or 12 of this title."

Section 402(c) of the Act [49 U. S. C., § 1002(c)] declares that:

> "The provisions of this chapter shall not be construed to apply * * * to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates * * *"

The December 18, 1947 report of the Commission states: "Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember-consignors, the association is operating for hire and therefore for profit." But earlier in the report the Commission found that: "All transactions relating to the purchase and sale of the customer goods are between the members and the consignors." And further that: "These differences or 'savings' are paid to the member consignees, regard-
145 less of the fact that the charges were collected from the consignors."

It is true of course, as the Commission points out, that "where goods are f. o. b. destination, it is ordinarily the seller who bears the freight, who suffers from the excessive charges", and the purchaser who pays the freight does so "solely as agent of the seller" [*Louisville & Nashville R. R. Co. v. Sloss-Sheffield, etc., Co.*, 269 U. S. 217, 235, 238 (1925)]. But those are matters of contract between the seller-consignor and the purchaser-consignee.

Here the determinative inquiry is not as to agency as between consignor-seller and consignee-member [cf. *Adams v. Mills*, 286 U. S. 397, 406-407 (1932)], but as to the agency relationship between both or either of them and the association. And the facts found by the Commission admit of but one conclusion as to this: That the association at all times acts solely at the request, and under the direction and for the account and benefit, of the member-purchaser. As between member and association, then, the former always acts as principal, the latter as agent.

The existence of this agency is implicit in the findings of the Commission. The report states that "All
146 of the shipments involved are consigned * * * upon instructions of the members" of the association. Admittedly, the facilities of the association are not available to a non-member shipper otherwise than through arrangements made by a member. And the necessary arrangements are that the member as principal instruct the association as

agent to handle the shipment. Moreover, both the purpose and the result of the transaction is not to benefit the shipper, but to reduce transportation costs to the member through savings effected in cooperation with other members who likewise employ the association as transportation agent.

When this principal-agent relationship between member-purchaser and the association is borne in mind it is clear that there is no profit to the association from the activities described in the Commission's report [49 U. S. C., § 1002 (c)]; and it is equally clear that the association, as agent for the members, does not "hold itself out to the general public to * * * provide transportation of property * * * for compensation" [49 U. S. C., § 1002(a)(5)].

The court is of opinion therefore that inasmuch as respondent association acts only as agent of its member "in consolidating or distributing freight * * * for the members * * * on a non-profit basis, for the purpose of securing the benefits of carload, truckload, or other volume
147 rates," respondents are not subject to regulation in such activities by the Commission pursuant to part IV of the Interstate Commerce Act. Which is to say that the conclusions reached by the Commission in the report of November 26, 1945 [264 I. C. C. 134] were correct.

Accordingly the court holds that the conclusions and requirements of the Commission, predicated upon the report of December 18, 1947 [269 I. C. C. 504], have no rational basis, and must be set aside.

Plaintiffs will submit findings of fact, conclusions of law and judgment setting aside the requirements of the Commission as prayed for, pursuant to local rule 7 within ten days.

January 24, 1949.

ALBERT LEE STEPHENS
Circuit Judge

LEON R. YANKWICH
District Judge

WM. C. MATHES
District Judge

148 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Findings of Fact and Conclusions of Law—Filed Feb. 18, 1949

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James M. Carter, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America; Daniel
149 W. Knowlton, Chief Counsel of the Interstate Commerce Commission and H. L. Underwood Attorney for the Interstate Commerce Commission appearing by H. L. Underwood for the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleadings submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I. C. C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument and having heretofore filed herein its written opinion, and good cause appearing;

Now Therefore, said court makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

1. Plaintiff, Pacific Coast Wholesalers' Association, is a non-profit corporation organized pursuant to the provisions of Division First, Part IV, Title XII of the Civil Code of the State of California and has its principal place of business in Los Angeles, California. It has no capital stock,

does not earn or declare dividends and membership therein, limited under the by-laws to fifty, is evidenced by non-transferable membership certificates.

2. Plaintiffs, Elmer J. Jensen, Percy T. Lyon and Ira C. Lambert, members of the Board of Directors, and G. A. Olson and Sol Smith, employees of said Association, are residents of the Southern District of California.

3. The members of the said Association are and at all times referred to herein have been engaged in business in the states of California, Oregon, Washington, Utah and Arizona, as wholesalers of automotive parts, machinery, hardware and other articles of property, purchased by said members from manufacturers or other suppliers located at various points east of Chicago, Illinois, and who are not members of the said Association.

4. All transactions relating to the purchase and sale of the goods comprising the said shipments are between the members of the Association, as purchasers, and the non member consignors, as sellers, whereby provision is made in some instances for payment by the sellers, as a credit on the purchase price of the goods, of all or some portion of the amount of freight charges which would accrue on each shipment if transported under the prevailing freight forwarder rates applicable to such shipment from origin to final destination.

5. Said Association was organized and is operated to provide a means of assembling, consolidating, forwarding, and distributing freight for its members on a non profit basis for the purpose of securing for its members the benefits of car load, truck load and other volume rates and the freight so assembled, consolidated, forwarded and distributed by the Association is comprised exclusively of property purchased by its members as aforesaid from manufacturers and other suppliers east of Chicago, Illinois.

6. At destination the freight is delivered by the Association to the member consignees or their customers and thereafter the member is credited with the difference between the amount paid by the consignor for the account of the member and the costs borne by the Association for transportation, administration, handling, distribution, taxes, and other incidental costs. No refunds are made to the non member consignors who paid freight charges or made freight allowances in the manner aforesaid.

7. The facilities of the Association are not available to a non member shipper otherwise than through arrange

ments made by a member wherein the member instructs the Association to handle the shipment comprising goods purchased by and consigned to such member or to a customer of such member.

151 8. By order dated May 6, 1944, the Interstate Commerce Commission instituted a proceeding of inquiry and investigation under Section 403 (f) of the Interstate Commerce Act for the purpose of determining whether the operations of Pacific Coast Wholesalers' Association, a corporation, or its directors, officers, or representatives are in violation of any provision of Part IV of said Act or of any rule, regulation, or requirement issued or established pursuant thereto. Said proceeding is docketed and designated in the files of the Interstate Commerce Commission as "Ex Parte 160—Pacific Coast Wholesalers' Association—Investigation of Status."

9. Hearings were held in said proceeding, Ex Parte 160, evidence both oral and documentary was received, briefs filed and oral argument had, following which the Interstate Commerce Commission, on December 18, 1947, rendered its Report wherein the Commission stated its Findings of Fact the substance and effect of which are contained in the Findings of Fact of the Court herein, and concluded therefrom as follows:

> "(1) That the Association's service in connection with shipments from non member-consignors to member-consignees and thei customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the Association's members and is not performed on a non profit basis within the meaning of Sec. 402 (c) (1) of the Act;
>
> (2) That the operations of the Association as described * * * are those of a freight forwarder in interstate commerce within the meaning of Sec. 402 (a) (5) of the Act, and that continuance thereof without a permit is in violation of Sec. 410 (a) of the Act and therefore unlawful; (and)
>
> (3) That respondents (the individuals) to the extent that they are parties to such unlawful
> 152 operations, are likewise in violation of Sec. 410 (a) of the Act."

10. By its said Report of December 18, 1947, the Interstate Commerce Commission further set forth its requirements that on or before certain specified dates respondents discontinue the operations found by said Report to be un-

lawful and to notify the Commission in writing, under oath, that such operations had been discontinued.

11. Thereafter a Petition for Reconsideration was duly filed by respondents in said proceeding before the Interstate Commerce Commission which petition was denied by the Commission prior to the commencement of this action wherein the said respondents, as plaintiffs herein, invoke the jurisdiction of this court under 28 U. S. C. Sec. 1336 and 49 U. S. C. Sec. 17 (9) to enjoin, set aside, suspend, and annul the said Report and Requirements of the Interstate Commerce Commission rendered December 18, 1947, in said proceeding, Ex Parte 160.

153 *Conclusions of Law*

1. The Association in assembling, consolidating forwarding, and distributing freight for its members including shipments from non member consignors to member consignees and their customers of goods sold on a f.o.b. destination or delivered price basis acts exclusively as the agent of the member consignees and not as the agent of the non member consignors.

2. There is no profit to the Association resulting from its activities as the transportation agent of its members in assembling, consolidating, forwarding, and distributing freight for its said members.

3. The Association in its said activities as transportation agent of its members does not hold itself out to the general public to provide transportation of property for compensation.

4. The Association's services in connection with shipments from non member-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered price basis is a service for the Association's members and is performed on a non profit basis within the meaning of Section 402 (c)(1) of the Interstate Commerce Act.

5. The operations of the Association, its directors, officers and employees in assembling, consolidating, forwarding, and distributing freight for the members of the Association are not those of a freight forwarder in interstate commerce within the meaning of Section 402 (a)(5) of the Interstate Commerce Act and continuance thereof without a permit issued by said Commission is not in violation of Section 410 (a) of the Interstate Commerce Act or otherwise unlawful.

The conclusions and requirements of the Interstate Commerce Commission predicated upon its Report of
154 December 18, 1947, in its proceeding Ex Parte 160 have no rational basis and should be set aside.

Dated: February 18, 1949.

ALBERT LEE STEPHENS
Circuit Judge

LEON R. YANKWICH
District Judge

WM. C. MATHES
District Judge

155 (Affidavit of Service by Mail Omitted)

156 In the District Court of the United States
for the Southern District of California
Central Division

(File Endorsement Omitted)

PACIFIC COAST WHOLESALERS' ASSOCIATION, a corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH,
PLAINTIFFS,

V.

UNITED STATES OF AMERICA,
DEFENDANT,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE,
INTERVENORS.

No. 8588-WM

Decree annulling, setting aside and enjoining enforcement of requirement by Interstate Commerce Commission—Filed Feb. 18, 1949

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James M. Carter, United States

Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America;

157 Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Commission and H. L. Underwood Attorney for the Interstate Commerce Commission appearing by H. L. Underwood for the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleading submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I.C.C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument, and having heretofore filed herein its written opinion and Findings of Fact and Conclusions of Law; and good cause appearing;

Now, Therefore, it is hereby decreed as follows:

That the requirements of the Interstate Commerce Commission as set forth in the Report of the Commission on Further Hearing, filed December 18, 1947, in its proceeding, Ex Parte 160, that the respondents therein discontinue the operations found by said Report to be unlawful, and notify the Commission in writing, under oath, that such operations have been discontinued be and the same are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined.

Dated: February 18, 1949.

Albert Lee Stephens
Circuit Judge

Leon R. Yankwich
District Judge

Wm. C. Mathes
District Judge

Judgment entered Feb. 18, 1949.
Docketed Feb. 18, 1949.
Book 56 Page 137.
Edmund L. Smith, *Clerk*
By C. A. Summons
Deputy

158 (Affidavit of Service by mail omitted.)

160 In the District Court of the United States

(File Endorsement Omitted)

(Title Omitted)

Petition for appeal—Filed April 12 1949

The United States of America and Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree and order of this Court entered on February 18, 1949, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition, to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

161 Dated April 12, 1949.

HERBERT A. BERGSON
Assistant Attorney General

EDWARD DUMBAULD
Special Assistant to the Attorney General

JAMES M. CARTER
United States Attorney

JAMES C. R. MCCALL
Assistant United States Attorney for the United States of America

DANIEL W. KNOWLTON
Chief Counsel, Interstate Commerce Commission

H. L. UNDERWOOD
Attorney, Interstate Commerce Commission
For the Interstate Comerce Commission

162 ACKNOWLEDGMENT OF SERVICE

Service and receipt of a conformed copy of each of the following documents connected with the appeal of the United States of America and Interstate Commerce Com-

mission from the final decree in *Pacific Coast Wholesalers Association, et al.*, vs. *United States of America, et al.*, Civil No. 8588-WM, is acknowledged this April 12, 1949, to wit:

Petition for Appeal, Assignment of Errors, Statement of Jurisdiction and Statement Directing Attention to Rule 12, Par. 3 of Supreme Court Rules.

HUGH GORDON
Attorney for Plaintiffs

FRANK D. CATLIN
Attorney for Intervenor, Frieght Forwarders Instiiute

163 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Assignment of Errors—Filed April 12, 1949

Now come the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, and in connection with their appeal herein, file the following assignment of errors upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the final decree of the District Court dated February 18, 1949.

The District Court erred:

1. In holding and concluding that the operations of the Pacific Coast Wholesalers' Association, its directors, officers and employees, in assembling, consolidating, forwarding and distributing freight for nonmembers of the Association are not those of a freight forwarder in
164 interstate commerce within the meaning of Section 402(a) (5) of the Interstate Commerce Act, and that continuance thereof without a permit issued by the said Commission is not in violation of Section 410(a) of the Interstate Commerce Act or otherwise unlawful.

2. In failing to hold and conclude that the Association, in respect to the service found to be unlawful by the Interstate Commerce Commission in its report of December 18, 1947, 269 I.C.C. 504, was operating as a freight forwarder within the meaning and terms of Section 402(a) (5) of the Interstate Commerce Act and that such operation without a permit was and is unlawful.

3. In holding that the said Association, in respect to its service, found to be unlawful as aforesaid, by the said

Commission, was acting solely on behalf or for the benefit of its members and was not operating for profit.

4. In holding and concluding that the said Association's services in connection with shipments from non-member consignors to member consignees, of goods sold on a f.o.b. destination, or delivered price basis, is a service for the Association's members and is performed on a non-profit basis within the meaning of Section 402(c)(1) of the Interstate Commerce Act.

5. In not holding and concluding that in respect of shipments of goods of non-member consignors to members of the said Association as consignees, as to which shipments the freight charges are paid or borne by the non-member consignors, the said Association is operating on a profit basis, and is not performing a service for its members but is performing such service for the non-member consignors, as their agent.

6. In holding and concluding that, in its services of assembling, consolidating, forwarding, and distributing shipments of goods of non-members of the Association, consigned to members of the Association, sold on a f.o.b. destination or delivered-price basis, the said Association acts exclusively as the agent of the member consignees and not as the agent of the non-member consignors.

165

7. In not holding and concluding that crediting or distribution to the member consignees, and the receipt by them, of the so-called savings made on the shipments of freight of non-member consignors, the freight charges on which had been paid or borne by said non-members, resulted in a profit to said members, who bore no part of said charges.

8. In holding that the conclusions and requirements of the Interstate Commerce Commission, predicated upon its report of December 18, 1947, have no rational basis.

9. In entering a decree setting aside, annulling, and enjoining enforcement of, the requirements made by the Interstate Commerce Commission.

10. In not entering a decree dismissing the complaint.

Dated April 12, 1949.

HERBERT A. BERGSON
Assistant Attorney General

EDWARD DUMBAULD
Special Assistant to the Attorney General

JAMES M. CARTER
United States Attorney

JAMES C. R. MCCALL
Assistant United States Attorney
For the United States of America

DANIEL W. KNOWLTON
Chief Counsel,
Interstate Commerce Commission

H. L. UNDERWOOD
Attorney, Interstate Commerce Commission
For the Interstate Commerce Commission

166 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Order Allowing Appeal—Filed April 12, 1949

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in said cause entered on February 18, 1949, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed, that the said appeal be, and the same is hereby, allowed as prayed for.

Dated April 12, 1949.

WM. C. MATHES
United States District Judge

167 ACKNOWLEDGMENT OF SERVICE

Service and receipt of a conformed copy of each of the following documents connected with the appeal of the United States of America and Interstate Commerce Commission from the final decree in *Pacific Coast Wholesalers Association, et al. vs. United States of America, et al.*, Civil No. 8588-WM, is acknowledged this April 12, 1949, to wit:

Order Allowing Appeal. Citation on Appeal, and Order as to Exhibits, dated April 12, 1949.

HUGH GORDON
Attorney for Plaintiffs

FRANK D. CATLIN
Attorney for Intervenor,
Freight Forwarders Institute

184 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Notice of Appeal—Filed April 12, 1949

(Pacific Coast Wholesalers' Association,
(Elmer J. Jensen,
To: (Percy T. Lyon,
(Ira C. Lambert,
(G. A. Olson,
(Sol Smith.

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, and each of them, do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court of the United States for the Southern District of California, Central Division, made and entered February 18, 1949,
185 setting aside the requirements of the Commission made in its report of December 18, 1947, in *Ex Parte No. 160, Pacific Coast Wholesalers' Association, Investigation of Status*, wherein the Commission required the respondents, in that proceeding, appellees herein, to discontinue certain service rendered by the said Association, found by the said Commission to be unlawful.

Dated April 12, 1949.

HERBERT A. BERGSON
Assistant Attorney General

EDWARD DUMBAULD
Special Assistant to the Attorney General

JAMES M. CARTER
United States Attorney

JAMES C. R. MCCALL
Assistant United States Attorney
For the United States of America

DANIEL W. KNOWLTON
Chief Counsel,
Interstate Commerce Commission

H. L. UNDERWOOD
Attorney, Interstate Commerce Commission
For the Interstate Commerce Commission

186 ACKNOWLEDGMENT OF SERVICE

Service and receipt of a conformed copy of each of the following documents connected with the appeal of the United States of America and Interstate Commerce Commission from the final decree in *Pacific Coast Wholesalers' Association, et al. vs. United States of America, et al.*, Civil No. 8588-WM, is acknowledged this April 12, 1949, to wit:

Notice of Appeal and Praecipe.

HUGH GORDON
Attorney for Plaintiffs

FRANK D. CATLIN
Attorney for Intervenor,
Freight Forwarders Institute

187 In the District Court of the United States
Southern District of California
General Division
(Title Omitted)
(File Endorsement Omitted)

Praecipe for Transcript of Record—Filed April 12, 1949.

The Clerk will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include therein:

1. Complaint, including Exhibits A and B only.
2. Answer of the United States.
3. Intervention of the Interstate Commerce Commission.
4. Answer of the Interstate Commerce Commission.
5. Motion to intervene of Freight Forwarders Institute.
6. Order granting motion to intervene of Freight Forwarders Institute.
7. Answer of Freight Forwarders Institute.
8. Order setting case for hearing.

188 9. Opinion of Court, filed January 24, 1949.
10. Findings of Fact and Conclusions of Law.
11. Decree setting aside requirements of Interstate Commerce Commission, and enjoining enforcement thereof, filed February 18, 1949.
12. Petition for appeal of United States and Interstate Commerce Commission, filed April 12, 1949.
13. Order allowing appeal, filed April 12, 1949.

14. Citation on appeal, dated April 12, 1949.
15. Statement to appellees pursuant to paragraph 2, Rule 12 of the Rules of the Supreme Court.
16. Jurisdictional statement.
17. Notice of appeal.
18. Record in Interstate Commerce Commission's Docket, Ex Parte 160, of testimony and exhibits presented in hearings in said proceeding and as introduced in the District Court, certified to by the Secretary of the Interstate Commerce Commission.
19. Assignment of errors.
20. This designation.
21. Order as to exhibits.

HERBERT A. BERGSON
Assistant Attorney General.

EDWARD DUMBAULD
Special Assistant to the Attorney General.

JAMES M. CARTER
United States Attorney.

JAMES C. R. MCCALL
Assistant United States Attorney
For the United States of America.

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

H. L. UNDERWOOD
Attorney, Interstate Commerce Commission.
For the Interstate Commerce Commission.

189 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Order as to Exhibits—Filed April 12, 1949

In accordance with the provisions of the praecipe of the United States of America and Interstate Commerce Commission, for transcript of record on appeal of the above-entitled cause to the Supreme Court of the United States

It is hereby ordered, that the original documents and papers received in evidence in the District Court in the hearing of said cause, and the stenographer's transcript of the proceedings, heard before the three-judge court on October 26, 1948, may all be forwarded in lieu of copies of such

documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

190 Dated this 12th day of April, 1949.

WM. C. MATHES
United States District Judge

191 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Petition for Appeal—Filed April 12, 1949

Freight Forwarders Institute, intervener in the above-entitled cause, feeling itself aggrieved by the final decree of the District Court of the United States for the Southern District of California, Central Division, entered in said Court on February 18, 1949, prays an appeal from said decree to the Supreme Court of the United States.

The particulars wherein it considers the decree erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Said intervener joins in the prayer in the petition filed by the United States, defendant, and the Interstate
192 Commerce Commission, intervener, that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith in the Supreme Court of the United States.

FRANK D. CATLIN
Frank D. Catlin
Title Insurance Building
Los Angeles 13, California

HARRY C. AMES
Harry C. Ames
Transportation Building
Washington 6, D. C.
Attorneys for Intervener

193 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Assignment of Errors—Filed April 12, 1949

Now comes Freight Forwarders Institute, intervener in the above-entitled cause, and in connection with its appeal

herein, files the following assignment of errors upon which it will rely in its prosecution of said appeal to the Supreme Court of the United States from the final decree of the District Court dated February 18, 1949.

The District Court erred:

1. In failing to enter a decree dismissing the complaint thus sustaining the order of the Interstate Commerce Commission.

2. In entering a decree setting aside, annulling and enjoining enforcement of the requirements of the order of the Interstate Commerce Commission.

194 3. In finding that the conclusions of the Interstate Commerce Commission were without a rational basis.

4. In failing to find that acceptance by consignees of a refund out of freight charges which they have never paid constitutes an operation for profit.

5. In sacrificing substance to shadow through its failure to recognize that the association is but the alter ego of its constituent consignee members.

6. In its failure to apply or to allow the Interstate Commerce Commission to apply the rule of reason in construing a statute open to construction on the basis of its reasonable intendment.

7. In its failure to give due and proper weight to the decision of an administrative body informed by experience and entrusted by Congress with the duty of administering a statute.

8. In substituting its judgment for that of the Interstate Commerce Commission on a body of facts which it concedes are not in dispute.

9. In adopting a construction which would defeat, rather than one in consonance with the purposes of the act.

10. In turning its entire decision upon the purely technical relation of principal and agent and thereby failing to take into account the realities of the situation.

FRANK D. CATLIN
Frank D. Catlin
Title Insurance Building
Los Angeles 13, California

HARRY C. AMES
Harry C. Ames
Transportation Building
Washington 6, D. C.
Attorneys for Intervener

195 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Order Allowing Appeal—Filed April 12, 1949

In the above-entitled cause, Freight Forwarders Institute, intervener, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on February 18, 1949, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

ORDERED AND DECREED, That the appeal be, and the same is hereby, allowed as prayed for.

Dated April 12, 1949.

WM. C. MATHES
United States District Judge

199 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Notice of Appeal—Filed April 18, 1949

To: THE ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA:

You are hereby notified that the District Court of the United States for the Southern District of California, Central Division, on Apr. 12, 1949, filed and entered an order allowing an appeal by Freight Forwarders Institute, intervener, to the Supreme Court of the United States from a decree filed and entered on February 18, 1949, in the above-entitled cause, and that the citation signed by such court on April 12, 1949, in connection with the order allowing such appeal, is made returnable within 60 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for
200 and the order allowing said appeal, interveners jurisdictional statement pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

This notice is given to you pursuant to the provision of U. S. Code, Title 28, sec. 47a (Act of March 3, 1911, c. 231,

Sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 219, 220).

Dated April 12th, 1949.

FRANK D. CATLIN
Frank D. Catlin
Title Insurance Building
Los Angeles 13, California

HARRY C. AMES
Harry C. Ames
Transportation Building
Washington 6, D. C.
Attorneys for Intervener

201 Acknowledgments of Service of Papers on Appeal omitted in printing.

209 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Praecipe for Transcript of Record—Filed April 19, 1949

The Clerk will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include the following:

(1) All of the documents, records and papers as requested under and by virtue of the praecipe filed herein on April 12, 1949, for and on behalf of the United States of America, Defendant, which documents and papers are hereby adopted for use for and on behalf of the Freight Forwarders Institute, Intervener;

(2) Petition for Appeal filed for and on behalf of the Freight Forwarders Institute, Intervener;

(3) Order Allowing Appeal filed for and on behalf of the Freight Forwarders Institute, Intervener;

210 (4) Citation on Appeal filed for and on behalf of the Freight Forwarders Institute, Intervener;

(5) Notice of Appeal filed for an on behalf of Freight Forwarders Institute, Intervener;

(6) Assignment of Errors filed for and on behalf of the Freight Forwarders Institute, Intervener;

(7) Statement directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States filed for and on behalf of the Freight Forwarders Institute, Intervener;

(8) Statement as to Jurisdiction filed for and on behalf of the Freight Forwarders Institute, Intervener;

(9) This Praecipe and designation filed for and on behalf of the Freight Forwarders Institute, Intervener.

FRANK D. CATLIN
Frank D. Catlin
Title Insurance Building
Los Angeles 13, California

HARRY C. AMES
Harry C. Ames
Transportation Building
Washington 6, D. C.
Attorneys for Intervener, Freight Forwarders Institute.

Service of a copy of the above praecipe is hereby acknowledged this 19th day of April, 1949.

HUGH GORDON
Attorney for Plaintiff

211 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Designation by Appellees of Additional Portions of Record —Filed April 20, 1949

Appellees designate the following matters to be included in the record on appeal in addition to the matters designated by appellants:

1. Exhibit "H" of the Bill of Complaint.

212 2. This designation.

Dated at Los Angeles, California, April 20, 1949.

HUGH GORDON,
GORDON, KNAPP & HENNESSY
By: s/ HUGH GORDON
Attorneys for Plaintiffs and Appellees.

213 (Affidavit of Service by Mail Omitted)

215 Clerk's Certificate to transcript omitted in printing.

216 Secretary's Certificate to following transcript omitted in printing.

1 Before the Interstate Commerce Commission

Ex Parte No. 160.

In the Matter of:
PACIFIC COAST WHOLESALERS' ASSOCIATION,
INVESTIGATION OF STATUS.

Reporter's transcript of proceedings

Room 229, Federal Building,
Los Angeles, California,
February 2, 1945. 9:30 A. M.

Before: L. WAY, *Examiner.*
Met pursuant to notice.

APPEARANCES:

Walter R. Taylor, 543 Monadnock Building, San Francisco, California, appearing for the Interstate Commerce Commission, Bureau of Inquiry.

H. B. Anderson, 543 Monadnock Building, San Francisco, California, appearing for the Interstate Commerce Commission, Bureau of Water Carriers and Freight Forwarders.

Hugh Gordon, 453 South Spring Street, Los Angeles, California, appearing for all respondents.

Harry C. Ames, 238-241 Transportation Building, Washington, D. C., appearing for Freight Forwarders Institute.

William Meinhold, 65 Market Street, San Francisco, California, appearing for Pacific Motor Trucking Company. Interested Party.

2 COLLOQUY

Exam. WAY: Come to order, gentlemen, please. The Interstate Commerce Commission has set before me at this time and place Docket *Ex Parte* 160, Pacific Coast Wholesalers' Association, Investigation of Status of the Pacific Coast Wholesalers' Association. Who appears for the respondents?

Mr. GORDON: Hugh Gordon, 453 South Spring Street, Los Angeles, 13, California, appearing for all respondents, and admitted to practice before this Commission.

Mr. TAYLOR: Walter R. Taylor, Attorney, 543 Monadnock Building, San Francisco.

Mr. ANDERSON: H. B. Anderson, District Supervisor, Bureau of Water Carriers and Freight Forwarders, 543 Monadnock Building, San Francisco.

Mr. AMES: Harry C. Ames, Washington, D. C., appearing for the Freight Forwarders Institute.

Exam. WAY: What is your position in this case?

Mr. AMES: Well, we are here, Mr. Examiner, to see if the facts are developed, and our position in the case is that the status of this applicant should be determined by the Commission upon the facts developed at this hearing.

Exam. WAY: You are not asking for any affirmative relief?

Mr. AMES: No, sir. We understand it is merely an investigation, and we are here as our interests may appear.

Exam. WAY: Any other?

3 Mr. MEINHOLD: William Meinhold, 65 Market Street, San Francisco, 5, California, appearing for Pacific Motor Trucking Company as its interests may appear. I have been admitted to practice before the Commission.

Exam. WAY: By its order, the Interstate Commerce Commission has caused this investigation of the status of the Pacific Coast Wholesalers' Association, having under consideration the matter of whether that association, officers, or representatives, are operating as freight forwarders in violation of the provisions of the Interstate Commerce Act.

Now, as to the matter of procedure, do the respondents desire to proceed?

Opening statement on behalf of respondents

Mr. GORDON: In that connection, if the Examiner please, I was advised by Mr. Taylor some days ago that the Commission desired and intended to proceed. Had I known that it was our privilege to proceed, I would have been very glad to have done so. However, I would like to make a brief opening statement for the record.

Exam. WAY: You may do so.

Mr. GORDON: I desire to call attention first specifically to the order noticing this investigation, it having been based on the provisions of Section 403 (F), in which it appears that the Commission may investigate, either upon complaint or upon its own initiative, whether any freight forwarder has failed to comply with any provision

4 of this part of the Act or with any rule or regulation, and so forth.

Now, in this connection, the respondents here, each and all of them, are not freight forwarders, in their belief. They have never been so adjudged, and certainly they never held themselves out to transport freight for anybody other than the members of their assoc' tion.

Notwithstanding that, the Commission, through correspondence, by letter, and by personal interview and statements with various representatives, including Mr. Taylor and Mr. Anderson, here representing the Commission, and with Mr. Snow in Washington, and I believe through my associate counsel, Mr. Wheat in Washington, Commissioner Porter, and others, have been advised repeatedly that the Pacific Coast Wholesalers' Association would willingly disclose to the Commission or its representatives any facts pertinent to its status, its past and present operations, and that all of its records concerning its operations were open to the Commission.

And agreeably to that, the representatives of the Commission some time in the latter part of 1943, I believe it was, spent several days in Los Angeles, at which time it was believed that they had seen all the records that they desired to see, and had obtained all of the information they sought by interview with various persons with the association.

Apparently there is some belief on the part of the Commission or some members of its staff that all of the information has not been fully developed. I wish to say very emphatically that any lack of complete information upon the part of the Commission is not due to any unwillingness or failure upon the part of the respondents now appearing here to accord to the Commission and its representatives the fullest opportunity to investigate informally the affairs of this association.

The Freight Forwarders Institute some weeks ago filed with the Commission an unverified petition alleging that the Pacific Coast Wholesalers' Association was operating substantially as a freight forwarder in contravention of the various provisions of the law.

That petition was answered categorically and fully by verified answer. The Commission, nevertheless, has seen fit to institute this proceeding, and I wish to state that it is our purpose and desire here, as it has been continually in the past, to still disclose to the Commission all of the information it desires.

Exam. Way: With that, I think we can proceed very rapidly in this case.

Mr. Gordon: We will cooperate in every way we can. And with all deference to counsel of the Freight Forwarder people, we must respectfully insist that such records as I apprehend may be desired to be brought here for the in-

spection of the Commission are not proper records for disclosure to individuals or freight forwarders or other
6 persons or corporations whose interests may be hostile to, or at least not in accord with the interests of the respondents.

We will do everything we can to avoid any clash of interests in that regard. I wish to assure the Commission and your Honor that we will endeavor to shorten the proceeding, and I understand that there are certain facts which Mr. Anderson and Mr. Taylor have developed in their previous investigation which can readily be stipulated. We will be glad to go along with that progress.

Exam. WAY: Mr. Taylor?

Opening Statement on Behalf of Commission

Mr. TAYLOR: The remarks of Mr. Gordon are much appreciated. His offer to cooperate in this hearing, of course, will relieve us at least the burden of a lengthy proceeding. If we, the Commission, had obtained all the information that we desire to obtain on our field investigations, of course, I don't presume that we would have this hearing.

Gentlemen, as attorney for the Commission, assigned the task of developing evidence at this hearing, it appears proper under the circumstances that a preliminary statement be addressed to the officials, the members, and the representatives of the Pacific Coast Wholesalers Association who may appear here as witnesses.

I desire to state that we, the Commission's representatives here, have no preference or prejudice in this proceeding. It is our intent to be fair and impartial in
7 all respects. Of course, such policy is only in conformity with past practices and in conformity with the general policy of the Commission. At the same time, please bear in mind that we, the Commission's representatives here, have the direct duty to inquire searchingly into the affairs and activities of the P.C.W.A., If at times during the course of our proceedings, in the examinations, it appears that we are prodding deeply—and we shall do so—please understand that the Commission ordered this hearing for the purpose of developing all the factual information possible relative to the organization and structure, physical operations, direction, and finance and control of the transportation operator doing business as the Pacific Coast Wholesalers' Association.

We are hopeful that at the conclusion of this hearing we shall have prepared a record and transcript sufficiently

comprehensive and detailed to enable the Commission in its deliberations at Washington to reach a decision as to whether or not the Pacific Coast Wholesalers' Association is a non-profit shipping association as defined in Section 402 (C), Part IV of the Act, and is, therefore, exempt from Regulation, as claimed by you, the respondents, or, if, on the other hand, it is a freight forwarder as defined by law and is subject to regulation by this Commission.

Mr. EXAMINER, we are ready to proceed.

Exam. WAY: All right. You may proceed. Call
8 your first witness.

Mr. TAYLOR: May the reporter incorporate at this time the definitions and exemptions provided in Section 402, Part IV, added to the Interstate Commerce Commission Act, as amended by amendment contained in the Act approved May 16, 1942, Public Law 558, 77th Congress, C.318, 2nd Section, 56, Statute L. 284, U. S. Code, Title 49, Chapter 13.

Pursuant to its authority as provided by law, the Bureau of Water Carriers and Freight Forwarders of the Commission requested the P.C.W.A. to assert its position in respect to filing an application for permit to operate as a freight forwarder. The Pacific Coast Wholesalers' Association, by its general manager, G. C. Olson, in a letter of reply, dated January 28, 1943, stated: "This Association does not hold itself out to the general public to transport or provide transportation of property for compensation. It does, however, consolidate, forward, and distribute freight for its members, only, on a non-profit basis. In connection with such operations we utilize the instrumentalities or services of common carriers under like conditions to those of freight forwarders. Inasmuch as Section 402 (C) states that the provisions of Part IV of the Act shall not be construed to apply to our operations, we did not, of course, file an application for a permit."

Thereafter, during 1943, the Commission through Mr.
R. W. Snow, assistant director of the Bureau of
9 Water Carriers and Freight Forwarders, advised the Association, through representation of its general manager, Mr. Olson, and his counsel, that a determination of status could be brought about in one of two ways:

First, the Association could file an application for a permit, accompanying it with a motion to dismiss, a hearing to be held on the application, and a determination made;

Second, the Commission could and it would be so recommended, institute a proceeding on its own motion to deter-

mine whether the Association was operating in violation of law.

Thereafter, when the Bureau of Water Carriers and Freight Forwarders on the Commission solicited the cooperation of the Association and repeatedly pointed out the advantages to it of procedure via Route 1 as outlined, the Association and G. A. Olson did not respond as suggested.

P.C.W.A. operations have grown rapidly since our entry into the war, and there is no longer comity in membership and goods shipped. The tonnage has reached such proportions that the Association now averages approximately six carloads per day from Chicago to Los Angeles. This is chiefly attributable to the freight of California Shipbuilding Corporation of Terminal Island and Associated Shipbuilding Company, Seattle.

It has become necessary for this Commission to determine formally whether the organization, physical operations, and financial system of this Association, as operated by Mr. Olson, its general manager, should classify it as a freight forwarder subject to Part IV of the Act.

We are ready, Mr. Examiner, for our witnesses.

Exam. WAY: Call your witnesses.

Mr. TAYLOR: I believe we should, if the Examiner please, introduce for the purposes of examination the records which have been subpoenaed from the Association and its officials.

Mr. GORDON: If the Examiner please, may the record show that in connection with the statement made by Mr. Taylor, while it is substantially entirely correct, I think it is not quite complete, and I would like if the Commission could incorporate by reference the correspondence passed between Mr. Snow and the Pacific Coast Wholesalers' Association regarding their unwillingness to accept his suggestion that applications for permit be filed, coupled with a motion to dismiss.

Exam. WAY: I do not think we can incorporate it by reference. I think it being so indefinite that it would be necessary to have copies of the correspondence. You may introduce that.

Mr. GORDON: Then may I just make a brief statement?

Exam. WAY: You may.

Mr. GORDON: I think counsel will stipulate, perhaps, that in response to Mr. Snow's suggestion that an application for permit and a request for another of dismissal be sub-

mitted as a means of determining the status of this Association, a reply was addressed to Mr. Snow to the
11 effect that the Association had never operated as a freight forwarder, had no desire or intention to do so, that they did not solicit freight or accept freight from the public generally, for transportation, and they felt they were not justified in filing an application for a permit as a freight forwarder, which, in their estimation would be a denial of the truth concerning their operations.

Exam. WAY: In order to save time, Mr. Gordon, I would suggest that you get together with Mr. Taylor, and I assume the correspondence you have referred to, and that which is included in the docket, and perhaps you can work out a stipulation which can be entered later.

Mr. GORDON: Thank you. A good suggestion.

Mr. TAYLOR: I believe we may stipulate, if Mr. Gordon pleases, at this time to include in the record the letter which Mr. Gordon addressed to Mr. Snow following a conference with Mr. Snow in Washington.

Exam. WAY: Well, I think you better discuss that off the record and find out precisely what dates and so forth and what letter you are referring to.

Mr. TAYLOR: I have the letter here, Mr. Examiner.

Exam. WAY: All right.

Mr. TAYLOR: I have here a four page typewritten letter from Mr. Gordon, 612 Citizens National Bank Building, Los Angeles, dated October 9, 1943, addressed to Mr. Snow in the Commission's offices in Washington. Subject:
12 "Pacific Coast Wholesalers' Association File F.F/4002."

Does Mr. Gordon wish to make this letter a part of the record?

Mr. GORDON: Yes, this is a letter to which I referred, and approved the Examiner's suggestion that we confer and file a copy rather than read it into the record.

Exam. WAY: Yes. I think that should be done.

Mr. TAYLOR: I believe it best that we introduce into evidence for the purposes of examination, only, the records which have been subpoenaed. Mr. Olson?

G. A. OLSON, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Your name is Mr. G. A. Olson?

A. Yes, sir.

Q. You are general manager of the Pacific Coast Wholesalers' Association with offices in the Central Building, Sixth and Main Streets, Los Angeles?

A. Yes, sir.

Q. Have you brought to this hearing, Mr. Olson, the records included in the subpoena which was served you?

A. Yes, sir.

Q. Will you identify those records, please, sir, for the purposes of examination in this hearing?

A. There are four file cases to your left, Mr.
13 Taylor, containing the records that were requested.

Q. Will you identify them in general terms for the purposes of the record?

Mr. GORDON: Can I interrupt just one moment, Mr. Taylor? Just so that the record may be clear, if the Examiner please. The subpoena served upon Mr. Olson was very broad in its scope, and would have required him to bring to the courtroom records that would have comprised not four of these filing cabinets but 96 of them, in addition to a large volume of ledger books and other records. Through a conference with Mr. Taylor and Mr. Anderson it was agreed that it was too burdensome and would not be helpful to the Commission and that only a certain portion of the records called for by the subpoena would be brought at this time as Mr. Taylor and Mr. Anderson would designate to us to bring. We brought that portion here, and the balance of the records or any part of the balance of the records that counsel for the Commission may require will be available and can be carted up here when request is made.

Exam. WAY: Does that satisfy you, Mr. Taylor?

Mr. TAYLOR: Yes. Thank you, Mr. Gordon.

Mr. GORDON: Will you identify those records, generally, Mr. Olson?

The WITNESS: You mean describe them? They are a lot of cancelled checks, check stubs, and records of accounts, ledgers, car files, correspondence.

14 Exam. WAY: Now, the subpoena is rather broad in its terms. It says: "Records covering all charges, collections and disbursements for and in connection with all transactions entered into by you for and on behalf of said Association.

"Two. All letters, correspondence, and memoranda, passing between you and members or prospective members of said Association."

So, I assume that whether or not all of the documents are here will be a matter for determination when we see what the documents are.

The WITNESS: Mr. Examiner, we brought up here the specific records that Mr. Anderson came to our office and asked us to bring, as Mr. Gordon explained a moment ago. I cannot recall the exact list of records, unless I had the memorandum before me that we made at the time. We brought everything they asked for.

Exam. WAY: I think we can go along.

Mr. TAYLOR: Thank you, Mr. Olson.

The WITNESS: Mr. Taylor asked me to read this memorandum (indicating), listing particular records requested by Mr. Anderson, and which we have brought up here. There is a record of the annual tonnage by terminals. There is a 1944 cost register. 1944 savings register. General ledgers for all years. Checkbook stubs for all years. Cancelled checks for all years. Vouchers for December,
15 1942. Vouchers for December, 1943. Vouchers for all of the year 1944. I believe that excludes November and December. And a report of shipments, tonnage, and savings to members in the year 1944. I have read the memorandum completely.

Mr. TAYLOR: Thank you, Mr. Olson. That will be all for now.

Mr. GORDON: If the Examiner please, I am informed by Mr. E. H. Matthews, Mr. Olson's office associate and assistant, who worked with Mr. Anderson in getting these records together, that the statement just made by the witness is not entirely correct, that all of the records called for by the memorandum are not here, because some of them are no longer in existence; old checks and check stubs are not available.

We have brought all that are available, that are in existence and that we know anything about.

Mr. TAYLOR: Have you brought with you, Mr. Gordon, all cancelled checks and check stubs for the years 1942, 1943, and 1944?

Mr. GORDON: Yes.

Mr. TAYLOR: Thank you. Well, that includes, does it not, Mr. Gordon, all of the personal checks of Mr. Olson which cover the operating expenses of his office. For instance, his payroll and his office rent and any other deductible expense which he may have in connection with his managerial position?

Mr. GORDON: It covers none of those. And in that
16 connection I would like to add that Mr. Anderson and I had a discussion about that and he indicated to me that he expected such records to be brought. I did not tell

him definitely at that time whether I thought they could or could not be brought, but on further consideration of the subpoena and of the entire issue presented, I did not think that they were called for by the subpoena. I am certain they were not, and I am also of the opinion that inquiry into Mr. Olson's personal check records for his personal rent, for his household expenses, and for his entertainment for personal matters, for his wages or salaries paid to his employees, in his general office expenses, are not records of the Pacific Coast Wholesalers' Association in any sense of the word and are not proper matters for inquiry. Certainly not comprehended by the order of investigation. However, I don't think that that's going to make any difference. Now, I am just anticipating a little bit, and for the information of the Examiner and the Commission, I wish to state that the facts will be developed by stipulation or by any method that counsel desires to pursue, that the Pacific Coast Wholesalers' Association throughout this time under consideration has employed Mr. Olson as its general manager to maintain such staff and facilities as were necessary to have these shipments consolidated and shipped to Los Angeles and here distributed to the individual members, and for which services he was paid an
17 agreed compensation of so many cents per one hundred pounds.

The contract of employment was to that effect, his accounting records that are here will show and disclose that he has received the compensation contemplated.

Now, I don't apprehend any useful purpose to be served whatever in going into the *minutiae* of Mr. Olson's office expenses to break down the details of what it has cost him to maintain an office, which as one part of its activities renders this service to the Pacific Coast Wholesalers' Association.

Mr. TAYLOR: Mr. Examiner, we, of course, take the position that the subpoena served on Mr. Olson is sufficiently comprehensive and detailed to include any and all records having whatever to do with his transactions as general manager in handling the business of the Pacific Coast Wholesalers' Association. Certainly one of the prime purposes of this hearing is to inquire into all receipts and disbursements occurring in Mr. Olson's office. He is not a salaried employee of this Association. If he were, it would be much different. He has been retained, and he is retained by the Board of Directors on a commission basis, based on so many cents per 100 pounds for handling certain phases of the operation of transporting freight, and it is quite neces-

sary at this proceeding that we be furnished all records pertaining to finances received by Mr. Olson and dis-
18 bursements made by Mr. Olson from his office. It is necessary that we ascertain here what the salary each year was as paid to Mr. Olson. We want to know what net salary was paid. If he is an employee, he is certainly an employee on an indefinite basis, and we don't look upon Mr. Olson entirely as an employee of the Pacific Coast Wholesalers' Association. We believe the subpoena comprehended the furnishing by Mr. Olson of all his personal checks. He makes his payroll, as I understand it, by checks signed by himself, and he makes all other disbursements relative to the Pacific Coast Wholesalers' Association's business.

Exam. WAY: I think the subpoena is comprehensive enough to include all matters handled by Mr. Olson as general manager or the manager of the Pacific Coast Wholesalers' Association. But that, of course, does not involve, as Mr. Gordon has suggested, his household expenses, entertainment, and matters of that kind, and I don't understand that you have any such intention to go into any such matters.

Mr. TAYLOR: I believe Mr. Gordon went a little bit far out of his way when he mentioned household expenses.

Exam. WAY: Are the documents involved in writing?

The WITNESS: No, they are not.

Exam. WAY: Will they be furnished?

Mr. GORDON: If the Examiner please, I must disagree with the construction placed by the Examiner
19 upon the subpoena, and I do not wish to answer categorically "yes" or "no" as to whether I would advise Mr. Olson to furnish these documents.

Exam. WAY: Cannot we go along and see what we have got and what they require, and then determine what we should do about it?

Mr. GORDON: That is exactly what I was about to suggest, and avoid this controversial issue as much as we can.

Mr. TAYLOR: May the record show that on the morning of January 31st, Wednesday, at 9:30 a. m., a conference was held in Mr. Gordon's office upon his request by telephone to me several days earlier, the conference being attended by Mr. H. B. Anderson and myself for the express purpose of advising Mr. Olson what records were required under the subpoena and to what extent the broad terms of the subpoena might be reduced.

At that conference Mr. Gordon was advised that we would require under that subpoena the records which Mr.

Gordon and Mr. Olson now say they are not required to submit at this hearing. We were informed at that time, to the best of my recollection, that such records would be furnished.

Mr. GORDON: Well, my recollection is that the request was made very definitely, and I stated at that time that insofar as we could, we would try to meet their request.

Exam. WAY: I suggest this, Mr. Taylor, that we don't know at the present time precisely what we have in
20 those boxes, and we don't know whether they may have everything that you need. If they don't, then we can go into the question as to what records are missing.

Mr. TAYLOR: Very well.

Exam. WAY: I think that would save time.

Mr. TAYLOR: That will be all for now, Mr. Olson.

(Witness excused.)

SOL SMITH, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Smith, you are employed as executive secretary for the Pacific Coast Wholesalers' Association with offices at 2714 South Hill Street, Los Angeles?

A. I am.

Q. How long have you been so employed?

A. Since 1934.

Q. In the same capacity?

A. Yes, sir.

Q. Have you brought with you to this hearing, Mr. Smith, the records required by the subpoena served on you?

A. I have all that are available. There are some in the years gone by that are not available, but I have all the office records here.

Q. Will you identify those records, please, Mr. Smith?

A. Well, as to location, they are in a suitcase back
21 or behind that pillar. They have correspondence, checks, cancelled checks, bank account records, membership lists, *et cetera*. I think—maybe additional material there, but it doesn't come to my mind. The files were merely taken out and brought.

Q. Do the records also include the minutes of the meetings of both the old unincorporated association and the new incorporated association?

A. Yes, I have minutes of the unincorporated; I believe counsel has the minutes for the incorporated.

Mr. GORDON: The incorporated minutes are here, Mr. Taylor.

Mr. TAYLOR: That will be all.

(Witness excused.)

J. H. ERNST was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. J. H. Ernst, president of Featherstone's, Incorporated, 1805 South Hill Street, Los Angeles?

A. Yes, sir.

Q. You are also secretary and treasurer of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. Have you been secretary and treasurer of the association since it was incorporated in September, 1943?

A. Yes, sir.

22 Q. And were you secretary and treasurer of the original unincorporated association, which was formed in March, 1935?

A. Yes, sir.

Q. And continually from 1935 up until the incorporation in 1943?

A. Yes, sir.

Q. Have you brought with you to this hearing, Mr. Ernst, all the records which were required by the subpoena which was served on you?

A. I have brought here everything that I have.

Q. And what does that include?

A. Well, it doesn't include very much of anything. It is a miscellaneous gathering.

Q. As secretary and treasurer of the association, both before and after the incorporation, did you not have in your possession the minutes of the meetings and the Constitution and By-Laws and Articles of Incorporation and all other papers pertaining to the official conduct of the association?

A. I have some of them. Some that I haven't, because we have an employed executive secretary that really does the work, and he has all those records.

Q. Are the official papers of both the old association and the new, which are not in your possession, at this hearing? And all other papers that have been taken over by Mr. Sol Smith, the executive secretary, is that right?

23 A. Yes.

Q. What, specifically, have you brought to this hearing, what papers?

A. Shall I open them?

Mr. GORDON: Oh, yes.

Q. Just in general.

Mr. GORDON: Mr. Taylor, I wish you would look at the file which the witness has opened here. It is rather hard to identify it otherwise than by saying that it includes copies of by-laws and minutes of the—not minutes, but the Constitution and By-Laws of the old, unincorporated association, miscellaneous correspondence, or copies of letters, copies of financial statements, and of various commission decisions and pleadings filed in the Interstate Commerce Commission and sundry matters pertaining to the shipment of freight and to other such matters that were of interest to the Association.

Mr. TAYLOR: Thank you, Mr. Gordon. Thank you, Mr. Ernst. That will be all for now.

(Witness excused.)

Mr. TAYLOR: Mr. Gordon, is it desired that we proceed with this investigation? Do you have any further comment to make in response to the Examiner's invitation to put into the record at this time any further remarks?

Mr. GORDON: Oh, yes. That is agreeable. You proceed. I have nothing of a general nature to bring to the
24 attention of the Commission.

Mr. TAYLOR: We are ready, Mr. Examiner, to proceed with the witnesses.

Exam. WAY: All right.

Mr. TAYLOR: I guess I will recall Mr. Ernst at this time.

J. H. ERNST was recalled, having been previously duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Ernst, you testified a moment ago that you have been secretary and treasurer of the Association, the old Association, and the newly incorporated Association, since it was first formed in 1935. Have you also been a director of the Association since that time?

A. Yes.

Q. In continuous office?

A. Yes, as far as I remember.

Q. Was the Association first formed in Los Angeles on March 27, 1935?

A. The Association was formed in Los Angeles. The date I can't verify.

Mr. GORDON: I submit that is a matter of record in the minutes. They should be identified to the witness.

Q. (By Mr. TAYLOR) I hand you, Mr. Ernst, a copy of what purports to be the Constitution and By-Laws

of the Pacific Coast Wholesalers' Association, the old, unincorporated Association, which was furnished the Commission in its field investigation. Was this copy the original copy of the Association as adopted in 1935, and, if so, was it in continuous effect up to the time of the incorporation in September, 1943?

Mr. GORDON: It is so stipulated.

Mr. TAYLOR: May the Constitution and By-Laws of the Pacific Coast Wholesalers' Association, just entered, be marked for identification.

Exam. WAY: Mark it for identification Exhibit No. 1.

(Exhibit No. 1, witness Ernst, marked for identification.)

Mr. GORDON: No objection to it being received in evidence, if that is desired.

Mr. TAYLOR: May it be received in evidence?

Exam. WAY: Without objection, it is received.

(Exhibit No. 1, witness Ernst, received in evidence.)

Exam. WAY: Have you a copy for the Examiner?

Mr. TAYLOR: Mr. Gordon, will you stipulate at this time that the file, which was given the Commission on its original field investigation in September, 1943—November, 1943, which I hand you, contains copies of the original records of meetings?

Mr. GORDON: May I just confer with Mr. Smith a moment? I will stipulate that the copies are true and
26 correct copies of the minutes of the old Association.

I have some doubt as to whether it includes all of the meetings, but as far as they go they are correct copies. We have the official file of the minutes here and can supplement anything that is not in the file that Mr. Taylor desires to offer.

Mr. TAYLOR: This file, of which I spoke, marked "Exhibit A-4", in the Commission's original investigation file, on the face of it states "This exhibit contains copies of certain minutes of meetings held by Pacific Coast Wholesalers' Association (unincorporated) during the period October 10, 1934 to September 16, 1943, inclusive, which is represented to us by Sol Smith and G. A. Olson as being the complete record of all minutes of meetings held by this Association."

Mr. GORDON: I can't stipulate that last statement; any representation that your memoranda shows to have been made by Sol Smith and G. A. Olson is not admitted. Hearsay, in the first place, but I am not sure that it is correct. But I am willing to stipulate it is a true and correct copy of certain meetings held within the period in question.

I desire at the proper time to submit additional minutes that have since come to light that were indicative of meetings held in this period, which are not included in your file.

Mr. TAYLOR: Yes. I was just trying to save time here by proceeding in this manner. I assume, Mr. Gordon, you have come prepared to present the additional rec-
27 ords of minutes of meetings which were not supplied at the former field investigation?

Mr. GORDON: Yes.

Mr. TAYLOR: In this file?

Mr. GORDON: Yes.

Exam. WAY: Do you intend to submit those exhibits, Mr. Taylor?

Mr. TAYLOR: I was going to ask Mr. Ernst to identify these, but I understand from Mr. Sol Smith that he will be unable to do so, so we will offer the papers just referred to and ask that they be marked for identification and offered in evidence.

28 Exam. WAY: That will be marked for identification Exhibit No. 2. Do I understand that you are stipulating they are true and correct?

Mr. GORDON: I do so stipulate, and no objection to them being received in evidence.

Exam. WAY: They will be so received in evidence.

(Exhibit No. 2, witness Ernst, received in evidence.)

Exam. WAY: Have you a copy for the Examiner?

Mr. TAYLOR: Mr. Examiner, we were furnished with only one copy at the time, and we don't have extra copies at this time.

Perhaps it would be well to state in this connection, in connection with Exhibit 2, which has been offered in evidence, that this consists of 25 pages and purports to contain copies of all minutes of meetings of record as follows:

October 10, 1934—

Exam. WAY: I do not think that is necessary, Mr. Taylor, to read the dates, as long as the document is so far identified, it will speak for itself.

Mr. AMES: Mr. Examiner, may I be permitted as the intervenor in this proceeding, may I be permitted to examine exhibits introduced into evidence for the purpose of formulating any questions that I may care to ask?

Exam. WAY: I believe that was the subject of an objection on the part of Mr. Gordon, that they were not proper for inspection of persons or individuals other than
29 the Commission. I think that certain of those dock-

ets would be proper for inspection, but perhaps not all of them. And that is a matter I will have to take under advisement and think about it a little bit.

Mr. AMES: Mr. Examiner, I have no desire to go into the boxes of files and perhaps I should say I have no right to go into the boxes of files that he just brought to court here under a subpoena *duces tecum* in this proceeding, but I do think that I have the right to examine anything that comes into the record by way of evidence.

Exam. WAY: You have that right, yes.

Mr. AMES: Very well.

Exam. WAY: Yes, they are a public record. It is open to the public, open to anybody that wants to see it.

Mr. AMES: My only purpose is to try and develop the facts.

Mr. TAYLOR: Mr. Examiner, I find that Mr. Anderson has a set of the minutes which were just introduced in evidence as Exhibit No. 2, which will be made available (handing document to the Examiner).

Exam. WAY: Thank you.

Mr. GORDON: Mr. Ames, will you excuse me just a minute? I want to reply to your question and pursue that question a little further. I seriously doubt counsel's right to participate in this proceeding. Now, the statement of his interest was indefinite, and no petition for intervention has been filed or allowed.

Exam. WAY: Of course, it isn't necessary that he file under the rules and practice and procedure; if he makes his statement plain enough as to his interests in this case, it is not necessary to file.

Mr. GORDON: I understand that, your Honor. That subject hasn't been passed on. That is what I meant to say. This, as your Honor knows, is somewhat of an anamolous situation, a group of men called here for investigation by the Commission as to affairs which they consider their private business, and I seriously doubt the right of others to intervene and to participate in that type of hearing to the full extent that interveners are usually accorded the privilege of participating.

Exam. WAY: Well, if it were shown that this is a private business, then your statement will be correct, but the matter for determination here is whether or not this association is operating as a freight forwarder in violation of the Act, and, as such, the intervenors are permitted to have access to all of the records here introduced, but I think Mr.

Ames will agree there is serious doubt as to his right to examine the matters which were brought in here under subpoena. But as far as his intervention, he is given that right by the rules of the Commission. In other words, the rules provide for an intervention. The only question is whether or not his position is such that he should be entitled to intervene.

31 Mr. GORDON: That is the question I raise, your Honor.

(Discussion off the record.)

(Short recess taken.)

Exam. WAY: With respect to the matter of participation, Rule 73 of the Rules of Practice provide in effect in an investigation proceeding an appearance may be entered at the hearing without filing a petition of intervention or other pleadings, if no affirmative relief is sought, and if there is a full disclosure and identity of the person or persons on behalf of the appearances is to be entered, and if the interest of such person in the proceeding, and the position intended to be taken are fairly stated. I think that has been done in this case. Mr. Ames has stated that he represents the Forwarding Institute, and that certainly should entitle him to participate as his interest may appear. Proceed.

Mr. AMES: May I have a copy of that letter, Exhibit 2?

Mr. TAYLOR: We have no extra exhibits.

Exam. WAY: Show him the original.

Mr. TAYLOR: Mr. Examiner, Mr. T. H. Fey, President of Fey and Krause, Incorporated, 1635 South Figueroa Street, Los Angeles, representative and member, has responded upon subpoena at this hearing, and I understand that he is ill. It is agreeable to the Commission that he be excused today.

Exam. WAY: That was a subpoena *in persona?*

Mr. TAYLOR: Yes, *in persona.*

32 Exam. WAY: You mean that he is excused for today? You mean by that you would like to have him here tomorrow?

Mr. TAYLOR: If he is able to be here tomorrow, we should like to have him.

Exam. WAY: He will be excused today, and we will see about tomorrow.

Mr. TAYLOR: Mr. Sol Smith just advised that Mr. Fey's hearing is not good, also.

Mr. Gordon, have you prepared a membership list showing dates of admission to membership that Mr. Sol Smith was to prepare?

Mr. GORDON: The list is here, Mr. Taylor, but I didn't have time during the recess to note on it the month and year when each member became a member of the Association. I will be glad to go ahead and get that ready as soon as I can, unless you want it now, it will be supplied later.

Mr. TAYLOR: I believe it should be introduced in evidence at this point. However, if it is not ready, we will defer that.

Q. (By Mr. TAYLOR) Mr. Ernst, who called the first meeting of the Association in 1934, the first record?

A. Well, I believe the one that was responsible was Mr. C. C. Colyear.

Q. Mr. C. C. Colyear. He is the Colyear of Colyear Motor Sales Company, recently deceased?

33 A. As I remember.

Q. And at that meeting the minutes which we have here in Exhibit 2 show also present as being yourself, Mr. Wesley, representing Motor Rim and Wheel, Mr. Carter, representing Carter and Ketchum, Mr. Kruger, representing Moreland Truck Company, Mr. Pettis, representing Ducommun Corporation, Mr. Yeaton, representing Wholesale Metal Dealers Club, Mr. Olson, representing Loretz & Olson, Mr. Sol Smith presiding. The minutes show that the meeting was held for the purpose of organizing a freight forwarding association, held in Sol Smith's office at 3:00 p. m., Wednesday, October 10, 1934.

Mr. GORDON: May I suggest the witness have before him the minute file so that he can intelligently answer these questions, and I call your attention to the fact that the minutes are not all in order. They begin at the bottom of the stack, but I notice that there are some earlier minutes, minutes of earlier meetings that appear a little later in the files.

Q. (By Mr. TAYLOR) Now, were these representatives who were present there, Mr. Ernst, representatives chiefly wholesalers of automobile supplies?

A. Yes.

Q. It is noted in the first paragraph that Mr. Sol Smith and Mr. Olson—I presume it is Mr. G. A. Olson—had conducted a survey for the purpose of securing neces-

34 sary tonnage to institute this Association. As I understand it, the purpose of the meeting was to effect a plan—

Exam. WAY: Just a minute. What is your answer?
The WITNESS: Was that a question?
Mr. TAYLOR: It is not all through yet. Pardon me.
(The question was read.)
Exam. WAY: Can you answer that?
The WITNESS: I don't remember that.
Mr. GORDON: The minutes so indicate.
Q. (By Mr. TAYLOR) The purpose was to consolidate l.c.l. freight of each member at Chicago for the purpose of making carload lot shipments and getting carload rates. Is that so?
A. Saving—to institute saving for ourselves on freight in carloads or less than carloads.
Q. Who called the first meeting, Mr. Olson, or Mr. Colyear, or Mr. Sol Smith?
A. As I remember it was Mr. Colyear, as far as I am concerned.
Q. Yes. Your next meeting, on March 27, 1935, represented in this Exhibit 2 was held at 2:00 p. m. Wednesday, March 27, 1935, at the office at 2714 South Hill Street. I suppose those offices were the offices of Mr. Smith at that time. This second meeting, as I understand it, was the first organization meeting, the first order of business being the adoption of the constitution and by-laws, on motion by Mr. Ernst and seconded by Mr. Colyear, which was carried unanimously.
35 Exam. WAY: Now, the witness hasn't answered that.
The WITNESS: As far as I know, yes.
Q. (By Mr. TAYLOR) And was the Constitution and By-Laws which we have introduced here under identification of Exhibit No. 1, published at that time?
A. I don't remember.
Q. Do you recall who prepared the document?
A. No.
Q. Well, you were—
A. Well, I said "no." I presume it was prepared by the members here (indicating).
Q. You were Secretary and Treasurer at that time, of course?
A. Yes.
Q. And it is assumed you would have some knowledge as to who prepared the—
A. Well, that is too far back. I don't—
Q. And was a copy of it circularized to the other first members?

A. I presume so.

Q. "Article XI, Duties of Officers—"

Exam. WAY: What are you referring to now? Are you now referring to the Constitution?

Mr. TAYLOR: Referring to the Constitution and By-Laws, Article XI, Duties of Officers.

Mr. AMES: Will you indicate the exhibit number?

Mr. TAYLOR: Section 3.

36 Mr. AMES: The page of the exhibit?

Mr. TAYLOR: Yes. We have been referring to Exhibit No. 1, page 3. This same exhibit will be in discussion until you are advised further.

Q. (By Mr. TAYLOR) That Section 3 reads: "The Secretary-Treasurer shall keep records of meetings and acts, and collect and disburse such money as may be authorized by the Board of Directors, and transact routine business." Have you kept such records, Mr. Ernst?

A. No, for the reason that we have an Executive Secretary who performs all that work.

Q. Article IV, Section 1, provides: "There shall be an annual meeting of the members of this Association to be held in Los Angeles, California, on the 2nd Tuesday of each year, at a time and place designated by the Board of Directors." Mr. Ernst, was an annual meeting of the members ever called as provided?

A. I don't remember.

Q. You as Secretary and Treasurer of the Association don't remember whether or not you had an annual meeting of the members at large.

A. I am Secretary *pro tem.* The Executive Secretary, Mr. Sol Smith, performs all that work.

Q. Did you ever attend any such annual meeting of the membership?

37 A. Annual? Annual meeting of the membership?

Q. Yes, referred to there in Article IV, Section 1, which is before you.

A. I would say "yes."

Q. You have. Will the minutes so show?

A. I don't know.

Q. Well, if there were annual meetings, of course, there would be record of the minutes of those meetings, would there not?

A. I think so. That would be in our Executive Secretary's hands.

Q. The portion of that question referring to Exhibit 2, Mr. Ernst, which has been introduced in evidence here, does not indicate that there has ever been an annual meeting of the membership at large as provided by Article IV, just referred to.

Mr. GORDON: I am willing to stipulate, if it will save time, that no annual meetings of the members of the unincorporated association were called or held.

Mr. AMES: Mr. Reporter, will you read that stipulation, please?

(The record was read.)

Exam. WAY: Do you agree to that, Mr. Taylor?

Mr. TAYLOR: Yes. That is stipulated, Mr. Gordon. Thank you.

38 Q. (By Mr. TAYLOR) Now, referring to Article VI of that copy of the Constitution and By-Laws under the heading of "Elections," Section 1 provides: "At the annual meeting in January of each year there shall be elected a Board of Directors for the Association, composed of five members."

Section 2 provides: "Nominations for directors shall be made from the floor of the meeting and five nominees receiving the highest number of votes shall be declared elected for the ensuing year, or until their successors have been duly elected and qualified."

Mr. Ernst, if the membership at large had not been invited to the annual meeting, the directors simply met and elected themselves, did they not?

A. Yes.

Q. And from year to year between 1935 and until the time of the incorporation in September, 1943?

Mr. GORDON: Mr. Taylor, again, in the interest of saving time, I think possibly the witness' last statement is not entirely accurate, that the directors re-elected themselves. And I can readily establish that by additional evidence, but I am willing to stipulate that no new or additional election of directors took place after the first election of directors, as reflected by the minutes of the organization meetings, and that the same directors so elected at that first

39 meeting held over from year to year until the Association was finally abandoned, and the corporation took its place. Is that stipulation acceptable?

Mr. TAYLOR: Yes, thank you.

Mr. AMES: May I inquire, Mr. Examiner, please: In so holding over, Mr. Gordon, would the directors do that at a

meeting or would they just hold over by mutual understanding?

Mr. Gordon: The directors held meetings at any time as the Board of Directors. I think that is shown by the minutes, and it is further substantiated by oral testimony.

Mr. Ames: My question had reference to whether they held meetings among themselves for the purpose of re-electing themselves.

Mr. Gordon: They did not.

Q. (By Mr. Taylor) Article VII, "Directors", Section 1 reads: "The business of the Association shall be under the direction of the Board of Directors." Did the Board of Directors actually direct the business of transportation operators during the period of the old Association's existence, that is from March, 1935, until September, 1943?

A. Well, the Board had to approve anything that was done.

Q. Anything that was done by whom?

A. By anybody. Anything that had to do with the operation of the Association.

Q. Well, during that entire period of time was not Mr. G. A. Olson employed first as traffic manager and later as general manager for the handling of the Association's business?

A. Under the direction of the—under the supervision of the Board of Directors, yes.

Q. And did you call meetings prior to any of his managerial activities and before he consummated his deals as general manager, such as negotiating and concluding contracts with terminals and trucking lines?

A. That is kind of a deep question.

Q. Well, of course, the point of it is: Did the Board of Directors authorize these acts by Mr. Olson, or did they meet after the acts were performed?

A. As I remember, they approved before he finished them.

Q. I assume that the minutes will so show, Mr. Ernst, that they did have these meetings to ratify the acts in those instances where the authorization was not given prior to the effecting of such business?

Mr. Gordon: That is objected to as irrelevant and immaterial, and argumentative, and not in the form of a question.

Exam. Way: The objection is overruled.

The WITNESS: Well, there should be two questions there, I think.

Exam. WAY: Can you answer them?

The WITNESS: The first one there is that as far as I know Mr. Olson never did anything before it was sanctioned by the Board of Directors.

41 Q. (By Mr. TAYLOR) Thank you. And that caused the Board of Directors to hold frequent meetings, didn't it, Mr. Ernst?

A. No.

Q. It did not?

A. (No response.)

Q. Was not this Association growing considerably between the years 1935 and, for instance, 1943, in September, when it was incorporated?

A. Yes.

Q. It is noted from the papers contained in Exhibit 2 that there were no meetings held by the Board of Directors between the dates of April, 1937, and August, 1939. That appears to be a period of well over two years. Do we assume that there were no transactions of importance during that period of time relating to the management of the Pacific Coast Wholesalers' Association that would require —that would not require a meeting?

A. I don't remember.

Q. It is also noted—

Exam. WAY: If you did have those meetings, there would be minutes of the meetings, would there not?

The WITNESS: Yes, sir.

Exam. WAY: And all the minutes of the meetings are here?

Mr. GORDON: I tried to indicate before, Mr. Examiner, please, that I stipulated that certain minutes were

42 here, and I expect to put on evidence to show that there were meetings held at which there were no minutes.

Mr. TAYLOR: I wish to state at this point, then, that the exhibit from which I am reading contains what was represented to Mr. Anderson at the time of his field investigation in December, 1943, as being all the minutes of meetings held by the Association up to that time, and I am unable to understand the position of the Association at this time in stating that we do not have all of the minutes of the meetings which were asked for.

Exam. WAY: Was that made a subject of the subpoena?

Mr. TAYLOR: Yes, these Association records, all records held by the Executive Secretary and Secretary and Treasurer were made a subject of the subpoena in the subpoena served for the purpose of this hearing.

Mr. GORDON: I think it will be made clear both to counsel and the Commission when I have an opportunity to put on some evidence why the minutes as submitted in evidence do not reflect all of the minutes of the directors that were held. In other words, at the time these copies of the minutes were furnished to the Commission's representative it was thought to be a complete record of the meetings. A further review of it, of such facts and memoranda have come to light in our study for this hearing, and have indicated plainly that all the meetings weren't written up, minutes weren't prepared for them.

43 Exam. WAY: Why weren't the records of such meetings supplied to the Commission under its subpoena?

Mr. GORDON: We didn't have time, if the Examiner please. We have supplied to the investigators of the Commission previously and to the Commission here in response to the subpoena all minutes of all meetings that we have.

Exam. WAY: Then do I understand that such other minutes of meetings as you have had will be referred to by you and explained by you?

Mr. Gordon: Yes, that is what I will endeavor to make clear, because there have been other meetings held which were not recorded by any minutes.

Q. (By Mr. TAYLOR) Well, now, Mr. Ernst, who prepared and kept the minutes of meetings during that entire period of the old Association?

A. I presume Mr. Sol Smith.

Q. And they should have been available in his office at the time of the Commission's field investigation in December, 1943?

A. If they had any.

Q. As Secretary and Treasurer of the old Association, it is assumed that you should know the answers, and not presume the answers with respect to these records. You certainly are the official. It is presumed that you maintained those records.

Mr. GORDON: I object to that statement as argu-
44 mentative, irrelevant and immaterial.

Q. (By Mr. TAYLOR) Referring back to the By-Laws, Article XI, Section 3, provides: "The Secretary-

Treasurer shall keep records of meetings and acts, and collect and disburse such money as may be authorized by the Board of Directors, and transact routine business."

I think the old Constitution and By-Laws are quite clear on that subject.

Exam. WAY: Well, ask him if it was done.

Mr. TAYLOR: I have asked him that before. I will ask him again.

Q. (By Mr. TAYLOR) Was that done, Mr. Ernst?

A. Not by me, because I am Secretary *pro tem*, and we have an Executive Secretary that does all that kind of work, for which he gets paid.

Q. For which he gets paid?

A. Yes, sir.

Q. And who pays him?

A. Actually it comes out of a freight fund.

Q. And Mr. Olson pays him, doesn't he?

A. Yes.

Q. The answer is "yes" that Mr. G. A. Olson pays him?

A. (No response.)

Q. Is that correct?

A. I think so.

Q. Well, you know so, don't you?

A. (No response.)

Q. And for the reason you have stated you have not actually assumed the duties and the requirements as set forth in the Constitution and By-Laws? Is that not correct?

A. Yes.

Q. You were Secretary and Treasurer in name only?

A. That is right.

Q. You never handled any funds of any kind?

A. (No response.)

Q. No moneys came into your possession from March 27, 1935, until September, 1943?

A. No.

Q. You never made any disbursements for the Association at all?

A. No.

Q. Referring to Exhibit 2, concerning which we had not concluded at the time Mr. Gordon objected, this exhibit purported as of December, 1943, to have contained the copies and all the copies of minutes of meetings of the Association, and these minutes also show that there were no Board of Directors' meetings between the dates of August 11,

1942, and March 31, 1943. Do you recall that any Directors meetings were actually held which were not recorded in the minutes?

A. No.

46 Q. You do not recall?

A. (No response.)

Q. The exhibit also shows that from the last period of time mentioned, March 31, 1943, there were only two additional meetings of the Board of Directors, August 10, 1943, and September 16, 1943. You do not recall that any meetings other than these referred to were held during that period of time?

A. I do not recall.

Q. Who was the first President of the Association? And the First Vice President of the Association, Mr. Ernst?

A. Mr. Colyear, President.

Q. Mr. C. C. Colyear? And who was the First Vice President?

A. I believe Mr. Tom Walsh.

Q. Of what membership concern?

A. You mean the name of the concern?

Q. Yes.

A. Chanslor & Lyon Company.

Q. Of Los Angeles?

A. Well, all over.

Q. Both here and other places.

A. Yes.

Q. Did you as Secretary and Treasurer, or as a Director during that period of time, ever receive complaints from members that the annual meeting was never called?

A. No.

Q. Please refer to Article XII "Resignations and

47 Dismissals," Section 2, which reads. "The name of any member may be stricken from the rolls, such as failure to cooperate, pay assessments or any other reason considered sufficient for such action by a majority vote of the Board of Directors"?

I assume, Mr. Ernst, that the members have always cooperated with the Board of Directors?

Mr. GORDON: I object to that. Argumentative and leading.

Mr. TAYLOR: All right. I will rephrase my question.

Q. (By Mr. Taylor) Has the Board ever found it necessary under this Section to apply its power to dismiss a member?

A. Not that I remember.

Q. Referring now, please, to Article III, "Membership," Section 1—

Mr. TAYLOR: At this time, Mr. Examiner, I believe it will be necessary to introduce the complete list of members, which shows the firms and concerns and the representatives and the dates of admission into membership. We requested this several days ago, but I understand it is still in the process of being assembled?

Exam. WAY: Is it here?

Mr. GORDON: Yes. The list of membership was primarily furnished to Mr. Taylor and the names of the individuals with whom the Association had contact and dealings relative to their membership. And at that time no re-
48 quest was made for the dates of membership. However, since then, and within the last couple of days, that request has been communicated to us, and I have just got the information for that last request, and it is practically ready, and I can hand it to counsel in just a minute or two.

Now, in response to counsel's request I hand him here the list which was previously prepared and to which we have added in pen and ink on the margins the month and year in which each member became a member of the Association, or the corporation which succeeded the non-incorporated association (handing document to counsel).

Mr. TAYLOR: May the reporter mark for identification, and we offer in evidence the membership lists of the Pacific Coast Wholesalers' Association as of January 15, 1945, constituting—.

Mr. GORDON: That should be changed now to February 1, 1945, because one of the names added there became a member after January 15, 1945.

Exam. WAY: No objection to its being received?

Mr. TAYLOR: Which constitutes three pages and includes 42 members.

Exam. WAY: It will be received in evidence and marked Exhibit 3.

(Exhibit No. 3, witness Ernst, received in evidence.)

Exam. WAY: I understand you have only one copy, and that is the original copy for the record. Is that true?
49 Mr. TAYLOR: That is the only copy we have, Mr. Examiner.

Q. (By Mr. TAYLOR) Mr. Ernst, I will hand you this list of members, Exhibit 3, and I will ask you, please, sir, to

recite therefrom the names and addresses of each member and the dates of admission to membership, and the nature of the freight, that is, as to description, the general nature of the freight handled by those members to the date of September, 1943.

Exam. WAY: Let me see it.

(Document handed to the Examiner.)

Exam. WAY: Isn't all that information shown on the exhibit, Mr. Taylor?

Mr. TAYLOR: Well, I want to question him in connection with these different concerns.

Exam. WAY: All right, to save a little time—

Mr. TAYLOR: If you are agreeable, I believe we can save a little time by proceeding otherwise.

Mr. AMES: Has that exhibit been offered, Mr. Examiner?

Exam. WAY: It has and it has been received.

Mr. AMES: Thank you.

Q. (By Mr. TAYLOR) Referring to Article III, "Membership," Section 1, Exhibit 1, which reads: "The membership of this Association shall be limited to persons, firms or corporations engaged in business in the States of California, Arizona, Oregon, Washington, Idaho, Utah or Nevada, as wholesalers of merchandise and whose volume of sales is in excess of 75 percent wholesale."

50 Mr. Ernst, have you as a Director and Secretary and Treasurer of the old Association abided by that provision with respect to the language of qualified membership?

Mr. GORDON: Now, just a moment. I hesitate to object, and I think the question is subject to objection.

Mr. TAYLOR: All right, I will ask it—

Mr. GORDON: Just this point there, Mr. Taylor, if you please: You say the list that has been furnished includes the list of members both of the unincorporated Association and of the incorporated Association. The By-Laws to which counsel is referring are the By-Laws and Constitution of the so-called old, unincorporated Association.

Mr. TAYLOR: Will the reporter read the question back? I believe the element of time is included in my question, please, sir.

(The question was read by the reporter.)

Exam. WAY: Can you answer the question?

The WITNESS: I would say, "no," not entirely.

Q. (By Mr. TAYLOR) Well, why did the Directors permit or accept, rather, the applications for membership of

firms, which did not meet those requirements as set forth in Section 1?

A. Well, the ones that don't come under this classification here, it might not be 75 percent wholesale, but they use a car of automotive merchandise, and that is the reason we took them in.

51 Q. This Association started out as an automobile supply association and was, to begin with, intended that a car should contain chiefly automobile supplies? Is that not right?

A. Not entirely, no.

Q. What other type of freight was intended from the beginning?

A. Well, that is way back. I don't remember now. Hardware for one.

Q. What else?

A. Well, that would be plenty.

Q. Do you consider Associated Shipbuilders of Seattle a wholesaler qualified for membership under Section 1 of your Constitution?

A. I don't know them.

Q. You were Secretary and Treasurer of this Association, and you don't know Associated Shipbuilders of Seattle?

Mr. Gordon: I object to the question. It has been asked and answered.

Exam. Way: I don't think he answered the question.

(The question and answer were read.)

Exam. Way: That is not responsive to the question.

The Witness: I would say "yes."

Q. (By Mr. Taylor) On what ground?

A. On the ground that they use in their building a very good proportion of automotive merchandise or hardware, and stuff of that kind.

52 Q. In the building of ships?

A. Oh, yes.

Q. Use a lot of automobile supplies in building ships.

A. Automotive merchandise.

Q. Such as what?

A. Well, copper tubing and steel tubing and bolts and nuts and what have you. And we handle that.

Q. What percentage of the total tonnage, for instance, of the Associated Shipbuilders during the year 1944 constituted the type of merchandise to which you relate?

A. I don't know.

Q. You said, "I believe that they handle a good deal of automotive supplies for the manufacturer." What was the tonnage of their automobile supplies?

A. I don't know.

Q. You don't know that?

A. (No response.)

Q. Would that be in excess of 75 percent wholesale? That is, speaking of volume?

A. I couldn't answer.

Q. Are they a wholesaler?

A. I don't know.

Q. As a Director of the Association, you voted, however, I assume, to accept the membership of Associated Shipbuilders.

A. Yes.

53 Q. Upon whose recommendation?

A. I believe the recommendation would have come from people in Seattle like Ballou & Wright, and people of that kind.

Q. Who are those firms?

A. They are in the same line of business that I am in.

Q. Well, do you have the Associated Shipbuilders application file with you here, Mr. Ernst? Have you brought that to this hearing?

A. No. I am Secretary *pro tem.*

Q. Well, do you recall voting on the membership, the admission to membership of the Associated Shipbuilders?

A. I don't recall it, but I presume I did.

Q. Was there any question raised at that time by you as to the qualifications of this proposed member?

A. By me?

Q. Yes.

A. I don't remember.

Q. You felt that they fitted well within the qualifications required in Section 1 of Article III, "Membership?"

A. As long as they were sponsored by houses in Seattle.

Mr. GORDON: When you say "houses," you mean members of the Association?

The WITNESS: Yes, members, I should say.

54 Q. (By Mr. TAYLOR) Will you please find from that list the date of the membership of the Associated Shipbuilders?

A. October of 1942.

Q. Referring to California Shipbuilding Corporation, Terminal Island, one of your recorded members, will you

please advise from the membership list before you the date they were admitted to membership?

A. October, 1942.

Q. Do you consider California Shipbuilding Corporation a wholesaler qualified for membership under Section 1 of your Constitution?

A. Well, they were taken in as members. I presume we figured they were qualified.

Q. Do you recall having received, as Secretary and Treasurer, the application for membership from the California Shipbuilding Corporation?

A. No.

Q. You don't recall reviewing any membership files of either of these shipbuilding companies?

A. No.

Q. And what type of freight was the Northern Commercial Company, Seattle, handling at the time they were made a member?

A. I am sure I don't know.

Q. When were they made a member?

A. What is the name?

Q. Northern Commercial Company, Seattle.

55 A. November, 1942.

Q. You don't know what business that concern is engaged in?

A. No, I do not.

Q. You don't know the nature of the freight?

A. No.

Q. You don't know whether they are a wholesaler?

A. No, sir. From the name, I presume it would be, but I don't know.

Q. Referring further to your list of members, what is the nature of the business of Shields-Harper?

A. Well, that would be strictly automotive.

Q. Where are they located?

A. One in Los Angeles, and they have several branches.

Q. What was the nature of the business handled by Marshall-Wells Company, Portland?

A. That is general automotive and hardware.

Q. In view of the fact, Mr. Ernst, that under Section 1 of the By-Laws and Constitution the membership was restricted to persons, firms and corporations engaged in West Coast States, how does it occur that Borg Warner Service Parts Company, 310 South Michigan Avenue, Chicago, was made a member.

A. That is strictly automotive.

Q. And I assume that their principal place of business is back in Chicago rather than here.

A. Well, there is a branch.

56 Q. They have a branch store here?

A. Branch.

Q. Is that also true of the Northwest Engineering Company, Green Bay, Wisconsin?

A. I can't answer that.

Q. And you don't know what type of freight that concern handles?

A. I can't recall it.

Q. Do you recall considering them in the meetings of the membership committee, which I presume were held by the Board of Directors for the purpose of admitting them to membership?

A. Yes.

Q. You don't know the nature of their freight?

A. No. I forget it. But they were sponsored by a member in that city.

Q. Are they a wholesaler?

A. I don't know.

Q. Referring to Article VIII—

Exam. WAY: Before reaching that, did you understand, Mr. Ernst, that it was the custom of this Association to take in memberships of firms, even though they were located, or even though they were beyond the scope of your membership requirements as shown by your By-Laws?

The WITNESS: Yes.

Exam. WAY: And that you not only took in members in the particular States that are shown here, but you also went to Eastern States for your members?

57 The WITNESS: No, only the States that are shown in here.

Exam. WAY: You mean that the membership was comprised entirely of the States shown in this article?

The WITNESS: I believe so.

Exam. WAY: Well, how about Chicago?

The WITNESS: Well, they got their own branch here where they operate from.

Exam. WAY: You didn't have any members in any other States besides the one in Chicago here?

The WITNESS: To the best of my knowledge, no.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Referring to Article VIII, "Membership Fees, Due and Assessments," Section 1 reads as

follows: The fee for membership in this Association shall be $200.00 for shippers having over 40,000 pounds monthly and $125.00 for shippers having less then 40,000 pounds monthly."

As Secretary and Treasurer of the old Association, I assume that these fees were paid in to you, Mr. Ernst.

A. No.

Q. Not as provided by Section 3 in Article XI?

A. No.

Q. You did not receive or disburse any of these membership funds?

A. No.

Q. To whom were these membership fees paid by the new members?

58 A. No, they were paid to the Association and deposited in our regular bank account.

Q. Well, to what individual of the Association were these fees paid?

A. Well, I am hazy on that.

Q. As Secretary and Treasurer of the Association, I believe that you are the proper person to ask as to the receipt of disbursements of these membership fees, and don't you have some idea—

A. (Interrupting) I am Secretary *pro tem.*

Q. Well, can't you tell us who usually handled them, who received them?

A. Sol Smith.

Q. Mr. Sol Smith, your Executive Secretary, received them directly from the members?

A. I would say, "yes".

Q. What use was made of those membership fees, if you know?

A. Definitely, no.

Q. You don't know?

A. I don't know the exact routine, no.

Q. To what individual did these fees ultimately go, if you know?

A. I don't know.

Q. You as Secretary and Treasurer and as a member of the Board of Directors don't know what disposition, if any, was made of any of these membership fees during

59 the period of the old Association?

A. Well, that is a different question.

Q. All right. Then what disposition was made of those fees?

A. Well, it covered the office overhead and everything that goes with running an association.

Q. Well, does your Association own any real property?

A. No.

Q. Does it own any personal property?

A. No.

Q. Does it pay any rent?

A. (No response.)

Q. Speaking of the Association, the old Association prior to the incorporation—all these questions have to do with the old association.

A. Yes. Not directly.

Q. You have no regularly recognized place of business operated solely under the name of the Pacific Coast Wholesalers' Association, do you?

A. No.

Q. When was Mr. Sol Smith, with offices at 2714 South Hill Street, Los Angeles, first employed as Executive Secretary of the Association?

A. Is that a question?

Q. Yes, sir.

A. I would have to look under the dates.

Q. Well, approximately when?

60 A. I presume in 1934.

Q. From the very inception of the old Association, then, Mr. Sol Smith has been active as an employee of the Association?

A. I think so.

Q. Upon whose direction was he employed?

A. Well, he was employed by our Wholesale Jobbers Association before this P. C. W. A. came into effect. It fitted right in with his regular work.

Q. As a professional Secretary for business institutions and Associations?

A. Yes, sir.

Q. You can say, though, can you not, whether, for instance, Mr. Colyear employed him or whether you employed him or whether the Board of Directors employed him or whether, perhaps, Mr. Olson employed him?

A. He was employed by our other Association before this came into being, and he went right along without being re-employed the second time, because he was already employed by our jobber association.

Exam. WAY: Well, the jobber association was separate from the Wholesalers' Association, was it not?

The WITNESS: The Wholesalers' Association was P. C. W. A.

Exam. WAY: They are not the same organization? In other words, the Pacific Coast Wholesalers' Association is an entirely different organization from the Jobbers' Association, is it not?

61 The WITNESS: Yes, sir.

Exam. WAY: They did not engage in the same activities as far as transportation is concerned?

The WITNESS: No, he was already employed by us that formed this P. C. W. A.

Exam. WAY: So he was employed as a traffic man.

The WITNESS: No, he was employed as a Secretary.

Mr. GORDON: In that connection, may I inquire there: Wasn't it a fact that the Jobber Association included in its membership, Mr. Ernst—do you get my question?

The WITNESS: Yes.

Mr. GORDON: Included the same membership that you had in the Pacific Coast Wholesalers' Association.

The WITNESS: That is what I tried to explain.

Mr. GORDON: But it was a separate organization?

The WITNESS: Yes.

Mr. TAYLOR: Well, I don't believe Mr. Ernst has answered my question. Will the reporter read it?

(The question was read, and the answer.)

Q. (By Mr. TAYLOR) Mr. Ernst, as I understand it, you did not receive any moneys into your Association, you, yourself, as Secretary and Treasurer, nor did you disburse any. How was it possible to employ Mr. Smith and pay him a salary if you did not have any funds for that purpose?

Mr. GORDON: Well, now, wait a moment. I think
62 that assumes facts not in evidence, and is argumentative, and I object to it on those grounds.

Mr. TAYLOR: All right. Strike that out.

Q. (By Mr. TAYLOR) What salary did the newly formed Association pay Mr. Sol Smith?

A. I don't know.

Q. Well, has the Board of Directors ever gone on record as having employed Mr. Sol Smith, that is, as of the beginning of that Association?

Mr. GORDON: I object to that. Not the best evidence. The minutes will show whether they went on record to that effect. The minutes are in evidence, and they have the record of what the Board of Directors did.

Exam. WAY: The witness can say whether he knows or not. Do you know?

The WITNESS: What is that?

(The question was read.)

The WITNESS: I don't think so.

Q. (By Mr. TAYLOR) What was Mr. Sol Smith's salary at the beginning, in 1935?

A. I don't remember.

Q. Was he paid a salary?

A. Each house paid him separately.

Q. Each member—

A. We are talking about—what are we talking about, P. C. W. A.?

63 Q. P. C. W. A. in 1935, when they first employed Sol Smith, how was he paid, if paid?

A. As near as I can remember, officially he wasn't paid any more than what he got before.

Q. You mean he didn't draw any salary as Executive Secretary of P. C. W. A. in addition to what he was drawing at the time from the Wholesalers' Association?

A. I don't know. I can't remember.

Mr. GORDON: You mean the Jobbers' Association?

Q. (By Mr. TAYLOR) What is the Pacific Coast Wholesalers' Association's official address?

A. It is 27—whatever it is.

Q. 2714 South Hill Street?

A. Yes, sir.

Q. The office of Mr. Sol Smith?

A. Yes, sir.

Q. And the address at 108 West Sixth Street, the Central Building, that is the official address of P. C. W. A.'s general manager, Mr. G. A. Olson, it is not?

A. I would have to look it up. Wait until I take a look. I have never been in the place, but I presume that is correct.

Q. You are Secretary and Treasurer and a Director of the Association and have been since 1935, and you have never been in the office of your general manager?

64 Mr. GORDON: I object to that. It has been asked and answered, and it is argumentative.

Exam. WAY: Overruled.

Q. (By Mr. TAYLOR) What traffic service concern represented Featherstone's in March, 1935?

A. Say that again.

Q. What traffic service concern represented Featherstone's in March, 1935? Was it Loretz & Olson?

A. I don't believe we had any.

Q. Has Mr. G. A. Olson been present at all meetings held by the Board of Directors?

A. I don't know.

Q. Well, he is usually present, isn't he?

A. Usually, but when you say all, I don't know.

Q. Well, the minutes will so show, of course.

A. Yes.

Q. Well, in view of the fact that while you were Secretary and Treasurer you never came in possession of any funds of the Association, I assume that you never had a payroll of your own, that is the P. C. W. A., as an Association, of which you have been Secretary and Treasurer, you have never had a payroll of your own?

A. No.

Q. Naturally you have never kept any accounting records as you have indicated in your previous answers.

65 A. You mean I, personally?

Q. Yes, as Secretary and Treasurer of the old Association.

A. No.

Q. Have you ever been furnished any income records or expense statements by your general manager covering the operations of the Association?

A. Yes.

Q. And do you have those statements with you now relative thereto?

A. I believe some of them, yes.

Q. Do they cover the period of time of which we are speaking the old Association, the reports covering, for instance, each year, annual reports?

A. I would have to look at the dates. I don't know.

Q. Let us look at those papers at this time.

Exam. WAY: We will recess until 1:30.

(Whereupon, at 12:15 p. m., a recess was taken until 1:30 o'clock p. m.)

66 AFTER RECESS.

Exam. WAY: All right, gentlemen, let us come to order, please.

J. H. ERNST, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. TAYLOR: Will the reporter please read the last question?

(The question and answer were read.)

Q. (By Mr. TAYLOR) Have you had an opportunity to review those papers, Mr. Ernst?

A. I haven't got them.

Q. Then your answer is that you did not receive income or disbursement statements from time to time from the office of the general manager, advising upon the business —that is, the financial end of the transportation business?

A. The chance is very good that I received them but I haven't got them here, and I might have destroyed them.

Q. So your answer is you do not have any such statements at this hearing?

A. That is right.

Q. And you don't know of any that you have in your possession as Secretary and Treasurer?

A. That is right.

Q. Now, Mr. G. A. Olson has been in active charge of the operations of your Association since it was first formed?

67 A. Under the supervision of the Board of Directors, yes.

Q. Was he employed by a regular contract?

A. I don't remember.

Q. You don't know of any written contract executed on behalf of the Association with Mr. Olson, covering his employment?

A. No.

Q. At any time?

A. Well, "at any time?" That is something else.

Exam. WAY: Just a minute. He says, "Or at any time. That is something else." What do you mean by "something else?"

The WITNESS: Oh, well, I just put that in there, because he puts the question there a little bit—

Exam. WAY: You mean that he has been employed by the Association and has had a contract, either verbal or written, at a later date?

The WITNESS: Well, verbal? I think it is verbal remuneration, yes.

Q. (By Mr. Taylor) There never has been any written agreements, to your knowledge, between the Directors and Mr. Olson for the employment of Olson as general manager. Is that correct?

A. (No response.)

Mr. GORDON: That may be stipulated, if you desire.

Exam. WAY: Well, what is stipulated?

Mr. GORDON: The stipulation is that there have been no written contracts or agreements between the old, un-

68 incorporated association and Mr. G. A. Olson for his employment as general manager or traffic manager or otherwise.

Q. (By Mr. Taylor) Who first contacted Mr. Olson for the Association?

A. I don't know.

Q. As a matter of fact, Mr. Olson has been identified with the organizers of this Association from the very beginning, hasn't he, Mr. Ernst?

A. I would say, "yes".

Q. And hasn't Mr. Olson been identified with the Association as one of its organizers and one who has had a vested property interest in the association from its very inception?

Mr. GORDON: I object to that. Improper direct examination. Leading and suggestive, and it is a compound question.

Exam. WAY: Do you understand the question, Mr. Ernst?

The WITNESS: What?

Exam. WAY: Do you understand the question, Mr. Ernst?

The WITNESS: I think so, yes.

Exam. WAY: All right. Answer it.

Mr. GORDON: May we have the question read, please?

The WITNESS: Yes.

(The question was read.)

Mr. GORDON: I would like to enter a further objection: Calls for a legal conclusion, incompetent and irrelevant and immaterial.

69 Exam. WAY: Well, he says he knows, and let him answer. It has a bearing on this case.

The WITNESS: "From the inception" takes in a lot of territory. The first man that talked to me about pooling of freight and saving money, and so forth, was Mr. C. C. Colyear.

Q. (By Mr. Taylor) Yes. Well, of course, the purpose behind that question is to get an explanation of that part of the first minutes of the meeting held October 10, 1934, which is headed: "Meeting held for the purpose of organizing of Freight Forwarding Association" and which minutes read at the very beginning: "Chair reviewed activities of Mr. Olson and himself in the making of a survey for the purpose of procuring necessary tonnage" and so forth.

Now, wasn't the purpose, Mr. Ernst, that of associating yourselves, you as businessmen, in the handling of freight, of automobile supplies in general? Wasn't that the pur-

pose of that meeting to so associate yourselves with Mr. Olson, a traffic man, for the purpose of forming a joint business venture to obtain the lower carload rates on your consolidated freight?

Mr. GORDON: That is also objected to. Incompetent, irrelevant and immaterial. Calls for a legal conclusion. No proper foundation laid.

Exam. WAY: Do you know any facts about it, Mr. Ernst?

The WITNESS: Well, the facts are these, that we were more or less being held up by forwarding companies,
70 and we decided to form some kind of an association or incorporation or what have you to pool our own freight and make a saving for ourselves.

Exam. WAY: And with that idea in view this organization was formed?

The WITNESS: Yes, sir.

Exam. WAY: And at that time was Mr. Olson connected with the organization?

The WITNESS: Not that I know of. When we decided to see if we couldn't form our own forwarding setup, or save money on freight, I don't think he was in at that time.

Q. (By Mr. TAYLOR) Well, going back to the minutes of this first meeting, the Mr. Olson identified therein is the Mr. G. A. Olson who has been your general manager since that time, is he not the same Mr. Olson?

A. Oh, yes. But I am not talking about the first meeting. I am going back to when we were trying to form the Association, not when the first meeting was held.

Q. Well, this copy of the minutes states that the meeting was held for the purpose of organizing a freight forwarding organization. It is the first meeting of record that we have been furnished.

A. That isn't the way I understood the question. I don't think you mentioned the meeting there.

Q. Yes, I believe I did, Mr. Ernst.

71 (Discussion off the record.)

Mr. TAYLOR: Perhaps we should read the question back, Mr. Ernst:

(The reporter read the question indicated as follows:

"Q. Well, of course, the purpose behind that question is to get an explanation of that part of the first minutes of the meeting held October 10, 1934, which is headed: 'Meeting held for the purpose of organizing a freight forwarding organization' and which minutes read at the very beginning: 'Chair reviewed activities of Mr. Olson and him-

self in the making of a survey for the purpose of securing necessary tonnage' and so forth. Now, wasn't the purpose that of associating yourselves, you as businessmen, in the handling of freight of automobile supplies in general? Was not that the purpose of that meeting, to associate yourselves with Mr. Olson, a traffic man, for the purpose of forming a joint business venture to obtain the lower carload rates on your consolidated freight?")

Q. (By Mr. Taylor) That pertains to the meeting held October, 10, 1934?

Exam. Way: What is the question now?

(The reporter read the last question as follows:

"Q. Well, then, going back to the minutes of this
72 first meeting, the Mr. Olson identified therein is the Mr. G. A. Olson who has been your general manager since that time, is he not? Is he not the same Mr. Olson?").

Q. (By Mr. Taylor) Well, what meeting are you referring to, Mr. Ernst?

A. The meeting that you just mentioned.

Q. Do you consider Mr. Olson as an employee of the Association?

A. Yes.

Q. Why?

A. Because he gets paid by the Association.

Q. Does the Association pay Mr. Olson a Salary?

A. No.

Q. How does the Association pay Mr. Olson for his services?

A. So much per pound.

Q. How does the Association pay that so much per pound basis to Mr. Olson if the Association, itself, has never maintained any accounting records of its own, and, in fact, has never received, as you have testified, any funds of its own?

Mr. Gordon: I object to that. Assumption of facts not in evidence, and argumentative, incompetent and irrelevant and immaterial.

Exam. Way: Well, how do you pay? How do you pay?

The Witness: "How do you pay?"

Exam. Way: How do you pay Mr. Olson?

The Witness: He gets so much per pound on freight.

73 Exam. Way: How does he get it?

The Witness: Well, let me see, that is the—on my own freight, that is a deduction of so much per pound on the amount of pounds that I receive per month.

Q. (By Mr. TAYLOR) The Association does not, in fact, pay Mr. Olson anything, does it? Mr. Olson deducts his own allowance, does he not?

A. I believe that is correct.

Q. From funds which he, himself, collects?

A. That is correct.

Q. Has the Board of Directors ever considered the feasability of paying Mr. Olson a straight salary?

A. It has been under discussion a good many times, but nothing ever came of it.

Q. Has Mr. Olson ever proposed that he be placed on a straight salary basis?

Mr. GORDON: I submit that is incompetent, irrelevant and immaterial and I object to it.

Exam. WAY: The objection is overruled. Answer the question.

The WITNESS: No, not that I know of.

Q. (By Mr. TAYLOR) Do you consider Mr. Olson as your employee who could be effectively discharged by you, the Board of Directors?

A. It probably wouldn't be good business, but it could be done.

Q. Now, I show you Mr. Olson's first allowance
74 deductions—referring to Exhibit 2, the minutes of the joint meeting of the Board of Directors and the members of the Association held in the office of Sol Smith, 2714 South Hill Street, Los Angeles, July 17, 1935, appears the first record which we have been supplied with, page 2, "The members individually shall pay to the traffic manager for services rendered then in connection with the pooling of their shipments (on receipt of monthly invoices) an amount equivalent to 10 cents per hundredweight on second bracket freight and five cents per hundredweight on first bracket freight."

Mr. Ernst, is that the allowance which you consider as being in the nature of a salary to Mr. Olson for his services?

A. Well, I guess it all depends on how you look at it.

Q. Well, how do you look at it?

A. Well, I always considered it as looking at it as a salary.

Q. And what is "first bracket freight", Mr. Ernst? What does that include, generally?

A. Well, it doesn't include bolts and nuts and stuff of that kind. It might include horns and merchandise of that kind, and that is first class bracket.

Mr. GORDON: May I suggest that the witness has got those two subjects reversed in his mind.

The WITNESS: What is that?

Mr. GORDON: Haven't you got those two subjects reversed in your mind?

75 The WITNESS: First bracket is a high freight or a low freight.

Mr. GORDON: Well, never mind.

Exam. WAY: Do you know what it is?

The WITNESS: No.

Q. (By Mr. TAYLOR) Well, which bracket of these mentioned here, first and second, does your freight, or the larger proportion of it shipped to you come under?

A. Ten.

Q. Under the 10 cent allowance bracket? That includes automobile supplies?

A. Yes.

Q. Now, as I understand the history of this allowance, the allowances were—the brackets were later joined into a 10 cent overall bracket, and the 5 cent was eliminated. Is that right?

A. I believe so.

Q. The reason for that question is I don't find anywhere in the minutes where that was voted upon, and I believe it is necessary at this point to develop from you, if our understanding is correct. What date was the first bracket rate of 5 cents per one hundred pounds, as indicated in these minutes, increased to 10 cents per one hundred pounds? A. I don't know.

Exam. WAY: What is this 5 cent and 10 cent? Is that a deduction that has been made and or what? It has

76 been variously called an allowance and something else. I don't understand what it means. Can anybody enlighten me on that subject?

Mr. GORDON: We will be very glad to enlighten you, if they don't want an answer from the witness.

Exam. WAY: Are you going to have someone in here, Mr. Taylor, that will explain these charges, rates, and classifications and so forth?

Mr. TAYLOR: I expect to, yes, sir, before it is over with.

Exam. WAY: I am just interested. If you are, we will forego that question now, but I don't understand what it is all about.

Mr. TAYLOR: Yes, Mr. Examiner. The purpose of the question at this time is to establish that Mr. Olson was directed as of record to increase the first bracket freight

allowance or deduction, whichever you may call it, from 5 cents to 10 cents, if the rate was so increased, and we understand from our field investigation in December, 1943, that such was the case.

Exam. WAY: That 5 or 10 cents, as the case may be, was the amount which was approved through the Pacific Coast Wholesalers' Association?

Mr. TAYLOR: No. That was the amount that was permitted by action of the Board of Directors to be retained by Mr. Olson as his compensation.

Exam. WAY: I see.

77 Q. (By Mr. TAYLOR) When was the 5 cent allowance or deduction increased to 10 cents?

A. I don't know. I will have to look in the book. I think—

Q. Was it ever approved by the Board of Directors?

A. If he gets it, I am sure it was approved.

Q. You are sure it was approved?

A. Yes.

Mr. TAYLOR: Perhaps at this time it might be well to introduce into evidence the additional minutes of meetings referred to by Mr. Gordon, which were not previously submitted to the Commission.

Exam. WAY: Have you those here?

Mr. GORDON: I am sorry if I have misled anybody. I endeavored to make it clear that I would stipulate that the minutes, copies of which were previously furnished to Mr. Taylor and to Mr. Anderson, were correct copies of the minutes of the Association, but I wasn't sure that it included all of the minutes. I have since endeavored to state clearly, as clearly as I could, that I believe there have been meetings of which there are no minutes, that all of the meetings which have been written up, to my knowledge, are included in the exhibit.

Mr. TAYLOR: Yes. Well, may we have a 5-minute recess Mr. Examiner?

Exam. WAY: Yes. Don't make it longer than 5

78 minutes because we've got to get along.

Mr. TAYLOR: The purpose is to examine the witness as to these given us and to advise as to whether the record of the increase is contained therein.

Mr. GORDON: We can stipulate that if t. at is the fact.

(Short recess was taken.)

Mr. TAYLOR: Will counsel for the Association agree to stipulate that the Board of Directors did not approve an increase in the compensation to be retained by Mr. Olson

with respect to the 5 cents per hundred pounds bracket, which was later increased to 10 cents per one hundred pounds?

Mr. Gordon: I cannot so stipulate. My advice is to the contrary. The 5 cent charge on the first bracket of freight was later increased to 10 cents, so that all freight was handled and charged and paid for on the basis of 10 cents per one hundred pounds, and that was done with the knowledge, approval and consent of the Directors. However, I am willing to stipulate further with counsel, upon his assurance that he has gone over the minutes included in the exhibit and that there is no record of that in the minutes that have been introduced here in evidence, but we expect to put on oral testimony to show that such approval was given for the increase.

Q. (By Mr. Taylor) Mr. Ernst, when was the approval for the increase referred to passed by the Board of Directors?

A. I don't know.

79 Q. You don't know what year?

A. I would have to guess, so I would say I don't know.

Q. Well, you don't know. The answer is you don't know?

A. Yes.

Q. In that same meeting as of July 17, 1935, Mr. Ernst, it is stated: "That the traffic manager be authorized to include freight for non-member shippers approved by the Board of Directors in Association pool cars and to retain the net proceeds thereof until further notice by the Board of Directors, providing that said non-member shippers shall receive no greater transportation advantage than members of this Association."

Did your Association from that time on handle tonnage for non-members in accordance with authority which was granted to the general manager?

A. I don't think so.

Q. You don't think so?

A. (No response.)

Exam. Way: Well, now, as result of that authority to take in new members, how many additional members were brought into that Association?

The Witness: The question to me?

Exam. Way: Yes.

The Witness: I don't know, offhanded.

Exam. Way: Well, was your Association expand-

80 ed so it would take in diversified dealers, or rather, dealers of diversified commodities?

The WITNESS: Well, our Association expanded materially, but it was kept very much in the original channels with the exception of a few that had more or less heavy hardware commodities and merchandise of that kind.

Exam. WAY: Now, would that apply to the Western States that are named in these documents, or would it permit the taking in of members in the Eastern States or Middle States?

The WITNESS: That is confined to the Western States, with the exception of one or two Eastern manufacturers that have warehouses on the Pacific Coast.

Q. (By Mr. TAYLOR) Since the effective date of the Forwarder Act, May 26, 1942, it is noted from the membership list that 20 new members have come into the association since that time. Did any of these concerns contact you as Secretary and Treasurer for an application to join your Association?

A. Myself as Secretary?

Q. Yes.

A. No.

Q. You had no correspondence with any of these members?

A. I am Secretary *pro tem.*

Q. Whom did these prospective members contact?

A. Generally the recommendation came from one of our members in that particular State, who would recommend him for membership in our Association.

81 Q. And then what would be done?

A. Let's see—they would be accumulated for a meeting, and then passed on and then passed on to the general membership.

82 Q. Well, as a matter of fact, wouldn't Mr. Olson go and see those concerns and discuss with them the advantages of being a member of the Association?

A. If they made an application, yes. In some cases, not in all cases.

Q. I assume from your previous replies that you as secretary and treasurer did not receive total tonnage reports from Mr. Olson covering the years 1942, 1943, and 1944?

A. We have no 1944, but I am under the impression that the previous years we received them.

Q. You don't know for sure?

A. I wouldn't swear on a stack of Bibles.

Mr. GORDON: You are referring to written reports, aren't you, Mr. Taylor?

Mr. TAYLOR: Yes.

Q. (By Mr. TAYLOR) It is noted in the minutes of the meeting of the Board of Directors of August 11, 1942, page 1:

"Moved: That, effective July 1, 1942, an increase of three cents per 100 pounds in the compensation received by G. A. Olson as general manager of this Association be granted for a period of one year."

Later it was extended and was operative from all the reports we have until the incorporation of the Association in 1943.

Now, what was the purpose of that increase of
83 three cents' allowance to Mr. Olson?

A. The purpose of the increase is about the same as everything else, overhead; rent, labor, and everything has gone up, and naturally he would be entitled to a little more than what he received in previous years.

Q You have reference to the expenses of Mr. Olson in maintenance of his office in the handling of P. C. W. A. business?

A. I have reference in general to overhead expense and everything has gone up, as everyone knows; naturally, he would be entitled for it there.

Q. Did Mr. Olson furnish tonnage reports to justify such increase?

A. That I don't know.

Q. On what basis was this three cents increase made at that time justified? Specifically what basis? Was it an increase in Mr. Olson's payroll, for instance, or was his office expense increased?

A. Well, the only thing I can say is the general overhead increased.

Q. You don't know then what his increased expenses had been?

A. No.

Q. Well, didn't the Board of Directors investigate the request for the three cents per hundred pounds increase at that time before they approved it?

A. Only by long discussions.

84 Q. Well, how many employees did Mr. Olson have in his office engaged solely in handling of P. C. W. A. business as of that time, July 1, 1942?

A. I don't know.

Q. What was Mr. Olson's rent at that time?

A. I don't know.

Q. And you didn't know at that time?

A. (No response.)

Mr. AMES: He shook his head "No."

Exam. WAY: (Addressing the witness) When he asks you a question, please answer audibly. Don't shake your head. The reporter can't get that answer.

Q. (By Mr. TAYLOR) You did not know at that time what Mr. Olson's total expenses were, for instance, during the first six months of 1942?

A. No.

Q. Did you know what his total income was during those six months?

A. No.

Q. In view of the steadily increasing cost of tonnage being then handled by the Association, what was the justification by the Board of Directors of the Association to increase Mr. Olson's income allowance from ten cents per hundred pounds to 13 cents per hundred pounds at that time?

A. Do you want me to answer that?

85 Exam. WAY: Yes.

The WITNESS: Did you ask a question?

Q. (By Mr. TAYLOR) Yes, I am trying to get some explanation from you for the record if we could possibly get it.

A. I presume it was due—naturally, if you have an increase in business, you have to have an increase in manpower. Naturally it costs you more money to handle the increased tonnage that you are talking about.

Q. On the other hand, if tonnage is increased, there is more money coming in, too, is there not?

A. Yes, but, nevertheless, you have to have so much help to do so much business.

Q. That was the purpose of my question: "How many employees Mr. Olson had prior to the time the increased allowance was made?"

A. That I can't answer; I don't know.

Exam. WAY: You don't know? You don't mean to say, Mr. Ernst, it costs more money to do a larger volume of business than it does to do a small volume? I mean, per unit of business?

The WITNESS: I mean in my experience a person can do so much work per day, and when you do more work you have to have more help. One person can perform so much, and when it goes beyond the limit, you have to have more labor.

Exam. WAY: You did not answer the question, but let it go.

86 Q. (By Mr. TAYLOR) At the time this three cents increased allowance was voted by your Board of Directors, July 1, 1942, was that matter of the increase first presented to the membership, as a whole, for its approval?

A. I believe it was put up to the Board of Directors.

Q. And was not presented to the membership at large further, you said?

A. Not that I know of.

Q. And to the best of your memory, was the matter later referred to the membership for ratification?

A. That I don't know.

Q. What fees or compensation, if any, did you draw, Mr. Ernst, from the non-incorporated association as secretary and treasurer?

A. None.

Q. As director?

A. None.

Q. Has Mr. Olson ever paid you money for services of any kind?

A. None.

Q. The Board of Directors did not draw compensation?

A. As far as I know, no.

Q. Speaking of the old Association, now?

A. Yes.

Q. Have you ever received fees for services of any kind or nature from accounts recorded by Mr. Sol Smith?

87 A. State that again.

Q. Have you ever received fees for services of any kind or nature from accounts recorded by Mr. Sol Smith?

A. No.

Q. I assume that you are unable to state the approximate allowance on P. C. W. A. tonnage retained by—which allowances were retained by Mr. Olson during the years 1942, 1943, and 1944?

A. No.

Q. What was Mr. Olson's approximate net income from the business during those years?

A. I don't know.

Q. Do you know Mr. Al Davis, president of the Transport Terminal Company in Chicago?

A. No.

Q. Did you ever have any business dealings with Mr. Davis on behalf of the Association?

A. No.

Q. You do know this is a consolidating house for P. C. W. A. in Chicago?

A. (No response.)

Mr. GORDON: May I suggest that I don't believe in the previous questions you have identified the consolidator and to whom you refer.

Mr. TAYLOR: I believe I stated the Transport Ter-
88 minal Company, didn't I?

Exam. WAY: You did in your last question, but maybe the witness doesn't understand they are connected.

Mr. TAYLOR: Will the reporter please read the first question?

(Question read.)

Mr. GORDON: I think the witness' mind was directed to Mr. Al Davis, and if you are referring to the Transport Terminal Company, the witness might be better able to answer. I don't know.

Mr. TAYLOR: Strike out my last question.

Q. (By Mr. TAYLOR) Do you know that the Transport Terminal Company in Chicago was a consolidating house?

A. I believe that is the name of it.

Q. Well, don't you know that you have a contract by and between your Association and the Transport Terminal Company for the handling and consolidation of freight for P. C. W. A. at that point?

A. Yes.

Q. Well, who negotiated and consummated the contract for such consolidation at that point?

A. You mean for P. C. W. A.?

Q. That is right

A. Mr. Olson.

Q. Mr. G. A. Olson?

89 A. (No response.)

Q. Did the Board of Directors meet and give Mr. Olson the authority to make a trip back East for the purpose of consummating such contract?

A. I believe so, but not as a special trip, if I remember.

Q. Well, what time did Mr. Olson first go back to Chicago for the purpose of negotiating such a contract?

A. I don't know.

Q. You don't know what year?

A. I don't remember.

Q. Do you remember whether bids were solicited from other warehouses in Chicago before the Transport Terminal Company contract was executed?

A. Not as I know of.

Exam. WAY: Now, the witness has said that Mr. Olson was authorized to go to Chicago. Can you develop some-

thing about that as to the time where, in the minutes of the meetings or—

Mr. TAYLOR: I believe Mr. Ernst said he didn't know what time Mr. Olson went back to Chicago.

Exam. WAY: What about the authority? What authority was granted or how it was granted?

Mr. AMES: Couldn't we have reference to the particular meeting by virtue of which he was authorized to go to Chicago and do this specific act? Unfortunately, I don't
90 have these exhibits, I can't study them.

Q. (By Mr. TAYLOR) Well, do you recall, Mr. Ernst, that Mr. Olson made a trip to Chicago in the spring of 1942 for the purpose of negotiating a contract with some consolidating warehouse at that point?

A. I believe he did, but I wouldn't verify the dates.

Mr. GORDON: Pardon me. I think in fairness to the witness his attention should be directed to the statement in the minutes of the meeting of August 11, 1942, where that subject is fully covered.

Mr. AMES: What page and what exhibit is that on?

Mr. TAYLOR: Exhibit 2, minutes of the meeting of the Pacific Coast Wholesalers' Association, August 11, 1942.

Mr. AMES: What page of the exhibit, please?

Exam. WAY: They are all shown by date, Mr. Ames.

Mr. AMES: All right.

Mr. TAYLOR: Well, for the record: The copy of the minutes of the meeting next preceding the meeting of August 11, 1942, is dated February 14, 1941, and the question asked Mr. Ernst is: Did Mr. Olson have the authority to go to Chicago for the purposes already stated before he went to Chicago to make a contract with a warehouse there for consolidating freight?

The WITNESS: I can't answer.

Q. (By Mr. TAYLOR) Your records do not so show?

91 A. (No response.)

Mr. TAYLOR: May the record show at this point that the minutes of the meeting of August 11, 1942 read in part:

"A complete report of developments since the last meeting was received from the general manager.

"The matter of a contract with the Transport Terminal Company for handling freight at Chicago was fully discussed and the following motion was regularly made, seconded, and carried unanimously:

"MOVED: That the contract entered into May 20, 1942, between G. A. Olson as traffic manager of this Association

and the Transport Terminal Company, an Illinois Corporation, for assembling, handling, loading and forwarding of freight through its terminal is hereby ratified and approved in full."

That is the first meeting, is it not, Mr Ernst, at which the Board of Directors met in connection with Mr. Olson's business trip to Chicago?

A. What was the question?

Exam. WAY: Show it to him. Let him read it off the minutes.

(Document handed to the witness.)

The WITNESS: I don't know. I haven't got the memory of the dates.

Q. (By Mr. TAYLOR) Do you own any stock in the
92 Transport Terminal Company in Chicago?

A. No, sir.

Q. Do you know that Mr. Olson is a vice-president of that corporation?

A. I know he is some kind of an officer; I didn't know he was vice-president.

Q. Was he vice-president of that corporation, the Transport Terminal Company of Chicago, before he executed the P. C. W. A. contract with that consolidating house?

A. I don't know. I don't know.

Q. You don't know whether his official position occurred before or after the execution of the contract?

A. No.

Q. Do you know how much stock he owns in that terminal?

A. I do not.

Q. Do you own any interest in any of these several distribution warehouses or terminals handling P. C. W. A. freight?

A. No.

Q. What is the distributing house for P. C. W. A. freight in San Francisco?

A. I don't know.

Q. What trucking concern handles the deliveries there?

A. I don't know.

Q. In Seattle?

A. I don't know.

93 Q. Salt Lake City?

A. I don't know.

Q. You don't know who the contract truckers for the Association are at those points?

A. No.

Q. Who executed contracts for the Association in connection with those services?

A. I don't know. Maybe I don't know very much about the Association. I couldn't swear.

Q. Do you know what fees or what charges the warehouses receive per 100 pounds for handling P. C. W. A. freight at these points of distribution?

A. No.

Q. Do you know what charges are allowed the trucking concerns who handle the P. C. W. A. tonnage in deliveries?

A. No.

Q. You don't know who made the contracts?

A. I would say "No, I don't".

Q. Now, we will give our attention to the period of time covered by the Articles of Incorporation.

Mr. TAYLOR: May we mark for identification and offer in evidence the Articles of Incorporation of the Pacific Coast Wholesalers' Association filed with the Secretary of State at Sacramento, California, as a domestic corporation,
94 September 27, 1943, which shows as the names of the several incorporators: Elmer J. Jensen, Jules H. Ernst, Percy T. Lyon, Ira F. Lambert, L. A. Lindroth, and which file also includes by-laws of the Pacific Coast Wholesalers' Association, consisting of 18 pages.

Exam. WAY: They may be marked Exhibit 4 for identification.

(Exhibit No. 4, witness Ernst, marked for identification.)

Mr. GORDON: I think we can probably stipulate that.

Exam. WAY: Any objection to the exhibit?

Mr. GORDON: There is no objection to the exhibit. I understand from counsel that this is a copy which was furnished to him, and I stipulate that they are a true and correct copy of the Articles of Incorporation and of the By-Laws. I notice that some pencil and ink memoranda have been made on this copy, which are not a part of the original.

Mr. TAYLOR: Do you have with you, Mr. Gordon, copies of the Articles of Incorporation, and also copies of the minutes which we may use instead of these for introduction in evidence?

Mr. GORDON: I am not sure whether we have or not. I would be glad to furnish them if we have them. I do not have them personally.

Exam. WAY: Without objection Exhibit 4 is received in evidence.

(Exhibit No. 4, witness Ernst, received in evidence.)

Mr. GORDON: I have no objection. I would be glad to submit the original minute book, Mr. Examiner, for
95 his convenience, containing the Articles of Incorporation and the By-Laws.

Mr. TAYLOR: No, no objection.

(Original minute book passed to the Examiner.)

Mr. TAYLOR: It is noted that this copy of the By-Laws which has been furnished bears no names as to certification. Will Mr. Gordon agree to stipulate that the originals were signed and were duly accepted as being the official By-Laws of the corporate association?

Mr. GORDON: It is so stipulated.

Mr. TAYLOR: Has this offering been accepted in evidence?

Exam. WAY: Yes. It has been been accepted in evidence.

Q. (By Mr. TAYLOR) Mr. Ernst, you are one of the incorporators and first directors of the corporation which was formed in September, 1943?

A. Yes, I find that date is correct.

Q. And the incorporators, the five names, who were mentioned in the offering of the instruments into evidence, also became the first directors of the corporation, did they not?

A. Yes.

Q. And those directors are the same directors who held official offices in the old Association?

A. No.

Q. What was the change in directors?

A. Are you talking about 1943 now, or at the present time?

96 Q. From now on we are talking about the incorporated Association.

A. At what time, now?

Q. As of the first date of the organization of the charter, September, 1943?

A. I will have to change that, then, and state "Yes".

Q. The answer is "Yes", that the same directors were on the newly formed corporation as—

A. (Interrupting) At that time.

Q. You mean as of September 14, 1943?

A. Yes.

Q. The directors were the same as in the old Association?

A. Yes.

Q. And those directors were in businesses handling for

the most part automobile supplies, were they not, all of the directors?

A. Yes.

Q. The record indicates that Mr. L. A. Lindroth succeeded Mr. W. D. Smith as a director, and Mr. Percy T. Lyon succeeded Mr. T. A. Walsh. He represented the same Chanslor and Lyon Stores, Incorporated. And those are the only changes in directorships, as to individuals?

A. Yes, as to memberships. However, the directorships remained the same, didn't they? The same member firms were represented on the Board of Directors in the
97 corporation as in the old Association?

Q. Yes.

A. I believe at that time that was correct.

Q. When was it first decided to incorporate the Association, and upon whose suggestion?

A. I don't remember the date, and I don't remember who suggested it. We talked about incorporating for quite a long time. We all more or less had a hand in it.

Q. Who do you mean by "we"? "We all had a hand in it"? You mean the members of the Board of Directors?

A. Yes, sir.

Q. And was a proposal to incorporate submitted to the members at large for consideration and approval?

A. I don't remember.

Mr. TAYLOR: At this point, Mr. Examiner, I believe it would be well to introduce into evidence here the minutes of all meetings of the Board of Directors following the incorporation.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Do you have with you, Mr. Ernst, those minutes of the meetings?

A. I will say again. That is Mr. Sol Smith.

Mr. GORDON: Just a minute here. I have handed them to the Examiner.

Mr. TAYLOR: Sir?

98 Mr. GORDON: The minutes of the corporation you are asking for?

Mr. TAYLOR: No, I am asking for the minutes of the meetings held by the Board of Directors since the incorporating date.

Mr. GORDON: Yes, the minutes of the meetings of the Pacific Coast Wholesalers' Association, they are here.

Mr. TAYLOR: They are in the form of a book?

Mr. GORDON: Yes, they are in the minute book, but we would like not to have the corporate minutes, not made a

matter of record, because those are required to be kept, by the law of California, for the corporation itself.

Mr. TAYLOR: Did you prepare copies of any of these minutes for the use of the Commission in this hearing?

Mr. GORDON: I did not. I would be glad to do so upon request, and will do so, if desired, before the hearing is closed.

Mr. TAYLOR: We should like an opportunity to examine the minutes of the meetings since the incorporation, and which opportunity we have not had thus far.

Exam. WAY: Will you furnish copies of the minutes?

Mr. GORDON: We will prepare them. But I want to correct counsel on the record. These minutes have been open for the Commission and for him, have been open at all times. We would be glad to have them look at them at any time, day or night.

Exam. WAY: Will these minutes serve your purpose?

99 Mr. TAYLOR: Well, perhaps we should defer this. I think it might be well to proceed otherwise at this time, and perhaps I will have an opportunity, or Mr. Anderson, to review these minutes in order that we can continue the discussion of the directors' meetings since the date of September, 1943. We don't have copies of those minutes.

Exam. WAY: Here are the minutes, Mr. Gordon.

(Handing minute book to Mr. Gordon.)

I suggest you get together with Mr. Gordon, and he will furnish you whatever you ask for.

Q. (By Mr. TAYLOR) The Board of Directors simply met and voted to incorporate? Is that so, Mr. Ernst?

A. That is right.

Q. And who drafted the Articles of Incorporation?

A. I believe Mr. Hugh Gordon.

Mr. GORDON: Is counsel willing to adopt my stipulation that I drafted the Articles and I drafted the By-Laws with the assistance of Mr. Olson, that is, insofar as the By-Laws ran?

Mr. TAYLOR: Yes. Thank you.

Q. (By Mr. TAYLOR) And how many directors were present at the time the Articles of Incorporation were approved?

A. (No response.)

Exam. WAY: Do you know, Mr. Ernst?

The WITNESS: Five.

100 Mr. GORDON: May I inquire: Is counsel referring to the meeting of the unincorporated Association or to the meeting of the incorporated Association?

Mr. TAYLOR: Well, I have the minutes here now. I was trying to get hold of the record of the meeting by the Board of Directors immediately preceding the incorporation, at which they voted to incorporate, and I have that before me now, referring to Exhibit No. 2:

"Minutes of meeting of Pacific Coast Wholesalers' Association, Board of Directors, held in the secretary's office, August 10, 1943, Mr. Jensen, presiding." And at page 2 under "Incorporation" it reads:

"Attorney Hugh Gordon's letter of July 23, 1943, addressed to this Association, relative to incorporation, was read, and following a review of the benefits to be derived from such action, a motion was regularly made, seconded, and carried unanimously that the Association be incorporated at once, in line with Mr. Gordon's communication."

Q. (By Mr. TAYLOR) Now, how many members of the Board of Directors, Mr. Ernst, were present in that meeting, to your memory? I believe you stated five. Have you recollected that it might not have been five?

A. No, I wouldn't be sure either way.

Mr. GORDON: The record shows there were three.

101 Can't we stipulate there were three.

Mr. TAYLOR: The record shows there were three members out of approximately 40 of the Association approved the plans to incorporate. That is the purpose of the question.

Exam. WAY: Talking about the directors or members?

Mr. TAYLOR: Well, three memoers—

Exam. WAY: You are talking about members?

Mr. TAYLOR: Three members of the entire Association who happened to be directors caused the Association to be incorporated, and the question is were the Articles of Incorporation submitted to the members for ratification at that time?

Mr. GORDON: Now, wait a moment. That is another question. If the Commission please, the record shows already by Exhibit 2 that at the meeting of August 10, 1943, action was taken by the directors of the then unincorporated Association to incorporate their Association. The minutes of the subsequent meeting, September 16, will indicate that again with only three members, out of a Board of five directors, were present and the Articles of Incorporation, prepared by myself, were presented and approved.

Now, then, the record of the corporation, Pacific Coast Wholesalers' Association, a corporation, will clearly show,

which is in accordance with the facts, that after the corporation was formed those Articles filed in a manner required by law, that then there was furnished to all
102 of the members of the old Association copies of the Articles of Incorporation and of the By-Laws, and their consent to such incorporation requested and obtained, so that in effect the incorporation was ratified by 100 per cent of the members of the old Association.

Exam. Way: Now, how is that shown here?

Mr. Gordon: It is not yet shown here, but counsel made the statement that I thought perhaps shows his lack of information on that subject.

Exam. Way: No. He is merely asking the witness.

Mr. Taylor: We are searching for information, Mr. Gordon. We know what happened after the Articles of Incorporation were filed with the Secretary of State, and my question at this point is to clear up this matter.

Q. (By Mr. Taylor) Mr. Ernst, did the Board of Directors incorporate the Association with the knowledge of the members?

A. I don't remember.

Q. Well, you were a member of the Board of Directors and secretary and treasurer. Don't you recall whether or not the proposition to incorporate was presented to the entire membership for its consent?

Mr. Gordon: If the Examiner please, I don't want to interrupt counsel's presentation here at all, other than to bring out the particular facts about that, but I am willing to stipulate that the decision to form a corporation
103 to take over the old Association affairs was made by the Board of Directors without first submitting it to the membership of the old Association, that they proceeded and formed a corporation and then before turning the affairs of the old Association over to the corporation, they obtained the consent and ratification of that action from the entire membership.

Mr. Taylor: I don't agree to stipulate that, Mr. Gordon.

Mr. Gordon: All right.

Q. (By Mr. Taylor) And, of course, you, the Board of Directors, decided what powers to reserve for yourselves in those Articles? Is that not so, Mr. Ernst?

A. What Articles?

Q. Articles of Incorporation.

A. Well, we did not reserve anything.

Q. Well, you approved the Articles of Incorporation, you, the Board of Directors, or three of you did so?

A. Yes.

Mr. TAYLOR: And may the record show that the last minutes of the meetings held by the Board of Directors in our possession at the beginning of this hearing was dated September 16, 1943, and questions will be deferred with respect of subsequent minutes until we have had an opportunity to examine the minute book, which Mr. Gordon has offered.

Exam. WAY: It is so understood.

Q. (By Mr. TAYLOR) Mr. Ernst, now with reference to the By-Laws of the corporation, which were drafted and approved by the Board of Directors on December 14, 1943, were the members at large consulted before those By-Laws were drafted?

104

A. I do not think so.

Q. Referring to Exhibit 4, By-Laws of the corporate Association just referred to, the Article II, "Membership", Section 1, reads in part:

"Qualification and election of members. Membership in this corporation shall be confined to persons, firms, or corporations engaged in business as wholesalers, or such other business or activity as may be approved by the Board of Directors in the States of California, Arizona, Nevada, Oregon, Washington, Idaho, and Utah, and shall not exceed 50 in number at any one time."

Isn't that a very liberal provision with respect to restriction of business or activity, Mr. Ernst?

Mr. GORDON: I object to that. Irrelevant and immaterial, and calling for the conclusion of the witness. No pertinency whether he thinks this is liberal or not liberal.

Mr. TAYLOR: All right. Here is the question:

Q. (By Mr. TAYLOR) Mr. Ernst, the Pacific Coast Wholesalers' Association, if its directors so choose, by the simple process of admitting a shipper to membership can handle any commodity, whether it is shoes, or Wisconsin cheese, or Iowa pork, or any other commodity?

105

Mr. GORDON: I submit it is immaterial. The powers granted the corporation do not identify its status as a public utility or anything else.

Exam. WAY: He can answer that question if he knows.

Mr. GORDON: It is sheer argument, if the Examiner please.

The WITNESS: We can restrict it, and we can approve it—of hauling anything.

Q. (By Mr. TAYLOR) Yes, you can handle freight in connection with any business you see fit, of course, under that

very liberal provision, can you not, Mr. Ernst?

A. Of a member.

Q. Whoever you desire to make a member, regardless of the nature of the business he is engaged in and the type of freight he handles, you can make him a member, if you want to?

A. It is the substance, but the opinion of the minds of the directors is to keep the freight somewhat to a conformity and not haul cheese or anything like that, as somebody mentioned.

Q. Well, now, referring to Section 5 of the same Article No. II on "Membership", "Termination of membership: Membership in this cooperation shall terminate upon the death of a member, or upon the transfer of the business in which said member was engaged, and may also be terminated by voluntary withdrawal by a member or by expulsion of a member by the Board of Directors for any
106 cause, whatsoever." "Upon termination of a membership, all rights of such member and of his or its successors or assigns, in and to this corporation, and the assets thereof, shall likewise terminate."

Does that provide, Mr. Ernst, an estoppel to any member other than the directors from participating actively or even indirectly in the affairs of this Association?

Mr. GORDON: I submit that is immaterial.

Exam. WAY: Have you dismissed any of your members?

The WITNESS: I think I answered that question this morning.

Q. (By Mr. TAYLOR) That is with respect to the old Association. Now, the new Association.

A. I don't think so.

Exam. WAY: I think we had better take a short recess.

(A short recess.)

Q. (By Mr. TAYLOR) Mr. Ernst, referring to Section 6, "Membership fees, assessments, and revolving fund. a. Membership fees" provide:

"An initial membership fee in the sum of $200.00 shall be charged to new members, which shall be paid at the time application is made for membership."

Now, how many new members have been admitted to the Association since the incorporation in 1943, to your knowledge?

A. I have no record of it.

Q. Well, this membership list, which has been
107 introduced in evidence, I believe indicates nine.

A. Yes, sir.

Q. If that is correct, we will proceed on that. That would make a paid-in fund of $1,800.00, wouldn't it, Mr. Ernst?

A. Yes.

Q. As secretary and treasurer of the newly-formed corporation, were those funds paid in to you?

A. No.

Q. Have you functioned as secretary and treasurer of the corporation in a similar manner with that in which you functioned in the old Association?

A. Correct.

Q. You have not handled any funds or accounts or monies for the Association?

A. No.

Q. To whom were these membership fees paid?

A. I believe our executive secretary.

Q. That is Mr. Sol Smith?

A. Yes.

Q. And what does Mr. Sol Smith do with that fund?

A. The details of it I don't know.

Q. You don't know whether the fund is still an active fund, that is, these membership fees have accumulated, and they are a constant active fund, or whether they have been disbursed?

A. No. I presume they are used for overhead to a
108 certain extent.

Q. Overhead for whom or what?

A. (No response.)

Exam. WAY: Well, you say you "presumed". Do you know?

The WITNESS: No.

Q. (By Mr. TAYLOR) Well, as a matter of fact, isn't Mr. Sol Smith paid a salary of $200.00 by Mr. G. A. Olson each month, and has not he been paid that as his salary since the corporation was formed? Do you know that?

A. Yes.

Q. Section 6 at (b) covering "Assessments" I read:

"In addition to the costs and expenses incidental to the consolidation, loading, transportation and handling of shipments by the corporation for and on behalf of its members, each member shall be charged and shall pay to the corporation such assessments as may be levied by the Board of Directors from time to time in amounts deemed sufficient to meet the normal requirements of the corporation for overhead, management, and administrative expenses."

Have any assessments been levied by the Board since incorporation, Mr. Ernst?

A. I don't think so.

Q. Under (c) "Revolving Fund", I read:

"For the purpose of providing working capital there shall also be paid to the corporation by each member
109 five cents per hundred pounds of all freight handled by the corporation for and on behalf of each member, the proceeds of which shall be used as a revolving fund for a period not exceeding two years. Refunds shall be made to the members pro rata for the payments so made into the revolving fund at such times and in such amounts as the Board of Directors may determine, together with any accumulation of funds collected by assessments in excess of the normal requirements of the corporation for overhead, management, and administrative expenses."

What are the normal requirements of the corporation as to overhead, management, and administrative expenses, Mr. Ernst?

A. I can't answer it.

Exam. WAY: Then you don't know?

The WITNESS: I don't know, yes.

Exam. WAY: Do you know what this revolving fund is?

The WITNESS: What it is really used for I don't remember.

Exam. WAY: Why is it called a "revolving fund"?

The WITNESS: I can't explain the definition.

Q. (By Mr. TAYLOR) On the basis of tonnage then being handled by P.C.W.A., that is, at the time these by-laws were adopted, how much revenue each month would this working fund assessment provide?

A. I have no record.

Q. Did you know that this five cents per 100
110 pounds based on tonnage handled by the Association at that time amounted to approximately $30,000.00 per year?

A. No.

Q. Do you know whether this assessment is still being levied?

A. I don't know.

Q. What is the amount of the present accumulation?

A. Of money?

Q. Yes, that has accumulated in that revolving fund set-up for the period of those years?

A. I don't know.

Q. You don't know what disbursements have been made from that fund, if any?

A. No.

Q. Mr. Ernst, referring for the moment to the minutes of the first meeting of the Board of Directors of the Association, which was held on the 14th day of December, 1943, at 2714 South Hill Street, I read:

"Resolved, That this corporation shall supervise, manage, and direct the consolidation, transportation and distribution of such l. c. l. freight shipment of its members as they shall select and designate for that purpose, and shall render such other service in connection therewith for and on behalf of its members as may be directed from time to time by the members.

"Further Resolved, That for all freight shipments
111 so consolidated, the members shall be charged and shall pay to the corporation, as advances to cover costs, such amounts as would be chargeable for similar transportation services at the prevailing rates of regulated freight forwarders, and all money so collected shall be deposited by the corporation in a fund designated 'freight account' which shall be then disbursed as follows:

"1. Payment of all carrier charges, insurance, assembly and handling charges, billing expenses, and all other costs and expenses directly incidental to the transportation service obtained by the corporation for and on behalf of its members.

"2. Payment of an assessment in an amount deemed sufficient to meet normal requirements of the corporation for overhead, management and administration expenses, the amount of such assessment being hereby fixed for the ensuing fiscal years at 15¼ cents per 100 pounds of all freight consolidated by the corporation for and on behalf of its members."

Now, as I understand it, that 15¼ cents per 100 pounds is in addition to the five cents in the revolving funds retained by Mr. Olson?

A. (No response.)

(Question read.)

A. That is a separate fund.

112 Q. So, the total of the deductions by Mr. Olsen as provided at that meeting were 20¼ cents per 100 pounds of freight handled? Isn't that correct?

A. 15¼ cents is deductions, and the five cents is a revolv- fund which belongs to the members and has nothing to do with Olson, as far as I understand it.

Q. According to your understanding, this five cents a hundred pounds is to be returned pro rata to members at the end of two years. Now, this 15¼ cents allowance per 100 pounds, what does that consist of? What was the justification for the 15¼ cents per 100 pounds to be deducted by Mr. Olson?

A. Increase in general overhead.

Q. Well, we developed in our preceding question that the charges retained before incorporation were 13 cents, did we not?

A. (No response.)

Q. There was a ten cent fee and later a three cent additional fee which made it 13 cents, and later a deductible allowance of 15¼ cents was provided for. Do you know what the additional 15¼ cents was for?

A. I think two cents of that is for making out freight bills, waybills, or what have you, and the other quarter of a cent is for postage, which was formerly contributed from another company—outside company.

Q. Then the deduction of 15¼ cents per 100
113 pounds was the gross allowance for Mr. Olson to cover all of the operating expenses incurred by him?

A. Outside of this two and a quarter, which is making out waybills and postage, an addition to what he had before.

Q. And how much expense did Mr. Olson say he incurred in the conduct of his office which justified the agreement by the Board of Directors to allow him to deduct 15¼ cents per 100 pounds from the accounts of the members?

A. I cannot answer that.

Q. You don't know?

A. I don't know.

Q. Was it intended that the 15¼ cents per 100 pounds should include legal expenses, for instance, and insurance premiums on insurance policies covering protection of the freight and such like?

A. I don't know.

Q. It was not to include that?

A. I don't know.

Q. Oh, you don't know.

A. I don't know.

Q. Now, Article IV of the By-Law, "Meeting of members", Section 1, "Place of meeting". I read:

"All annual meetings of the members of this corporation shall be held at the principal office of the corporation, or at

such other place as may be designated by the Board
114 of Directors in the notice for such meeting. All other meetings of the members shall be held at the principal office of the corporation, or at such other place as may be designated by the Board of Directors in notice for such meeting, or any other place which may be designated by the written consent of all members of the corporation entitled to vote thereat, given either before or after the meeting and filed with the secretary of the corporation."

Well, according to that, any one member, Mr. Ernst, can prevent a valid association meeting from taking place other than in Los Angeles? Is that not so?

Mr. GORDON: I object to that. Argumentative and irrelevant and immaterial.

Exam. WAY: Answer the question, if you know.

The WITNESS: I don't know.

Exam. WAY: Has the Association so restricted meetings of the members in any way?

The WITNESS: No.

Exam. WAY: Have you ever had a meeting of the members?

The WITNESS: No, not the old members, except by mail —proxy.

Q. (By Mr. TAYLOR) Never had a meeting of the entire membership since the incorporation?

A. Only by proxy.

Q. And when you speak of "by proxy", did you
115 have a meeting in January, 1944, for instance, as provided in the By-Laws?

A. I don't know.

Q. Well, you explain this "proxy"? You state it only had a meeting by proxy. What do you mean, Mr. Ernst?

A. The proxies that had to do with the election of the officers.

Q. And were notices mailed out to the members preceding the meeting, for instance, in January, 1944?

A. I can't answer that. I don't know.

Q. That was the first annual meeting after the incorporation date?

A. I don't know.

Q. Were proxies solicited by you at that meeting?

A. No.

Q. Did you hold any proxies at that time?

A. No.

Q. At this point, perhaps, we should comment on Section 7, "Proxies", which states:

"Every member entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such member, or its duly authorized agent and filed with the secretary of the corporation."

You didn't receive any proxies as secretary of the corporation at that meeting, January, 1944? I assume you had a meeting of the Board of Directors—you did not
116 have any membership meeting, did you?

A. January, 1944? I don't remember.

Q. Do you remember that you had a meeting in January of this year?

A. Yes.

Q. And was it a meeting of the membership at large or a meeting of the Board of Directors?

A. A meeting of the Board of Directors.

Q. And at that meeting did you have some proxies? Were you in possession of proxies as provided here in Section 7?

A. Proxies?

Q. Proxies.

A. No.

Q. You had none?

A. (No response.)

Mr. Gordon: I think you asked him that question plural, which might have implied he might have had a proxy.

Mr. Taylor: All right.

Q. (By Mr. Taylor) Mr. Ernst, did you have a proxy at the January, 1945 meeting of the Board of Directors?

A. Only my own.

Q. All right. Article V, "Directors: Section 1. Powers: "Subject to the provisions of the Articles of Incorporation, these By-Laws, and the provisions of the Civil Code of California as to action to be authorized or approv-
117 ed by the membership, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by the Board of Directors."

Has the business and affairs of the corporation been so controlled by the Board of Directors, Mr. Ernst?

A. I think so.

Q. "Section 3, Election and term of office. The directors shall be elected at each annual meeting of the members of the corporation, but if any such annual meeting is not held or directors are not elected, thereat the directors may

be elected at any special meeting of the members of the corporation held for that purpose. All directors shall hold office until their successors are elected."

As I understand it, the same Board of Directors exists today as existed at the time of the incorporation, September, 1943? Isn't that right?

A. No.

Q. There has been a change?

A. Yes.

Q. What change has occurred?

A. Two directors have changed.

Q. But representing the same concerns? Is that right?

A. No.

Q. Who are your present directors, and what are
118 the firms which they represent as members?

Exam. WAY: Didn't he explain that once before in his testimony?

The WITNESS: I think that is January, 1944, when he asked me that.

Mr. GORDON: I think the minutes are the best evidence. And the witness is sadly confused in his recollection, and I am going to ask, in the interests of getting this record straight, that we take the evidence of the meeting of this corporation, rather than the faulty recollection of the witness now on the stand.

119 He said there was no annual meeting in 1945. Well, the records show, over his own signature, attested as Secretary, that there was a meeting as of that date, shows action taken in detail, and a meeting of the membership and a meeting of the directors immediately following, and at the meeting of the membership, as will appear from these minutes, there were two changes made in the Board of Directors, new members elected in place of others retired.

Exam. WAY: What are these minutes we are talking about now?

Mr. GORDON: I am speaking about the minutes of the corporation. They are not yet in evidence.

Exam. WAY: Well, I think we ought to—

Mr. GORDON: But they are here.

Exam. WAY: I think we ought to have the facts straight. It appears this witness, who is testifying here, his memory is very short.

Mr. TAYLOR: Mr. Examiner, we are going to have a little time to review these minutes before we can use them for purposes of questioning, and we were hopeful that we

could conclude as to other information desired before they would have to—

Exam. WAY: Well, of course, we want the facts straight in this case, and if you can confine yourself to questions about matters which are not confirmed by the minutes, that would help some.

120 Mr. TAYLOR: Yes. Well, we will pass on, then, and go on to new questions.

Mr. AMES: Mr. Taylor, these articles and by-laws will go into evidence eventually, will they not?

Mr. TAYLOR: They will go in for the purpose of examination, but whether they will go in for the purpose of exhibit is left to the Examiner.

Exam. WAY: I understood Mr. Gordon said they were going to give us copies of those minutes.

Mr. GORDON: That was my statement. The minutes have been available and open for inspection by the Commission's representatives at all times, and in the interests of helping this thing along, I have stated that I will assume the responsibility and the job of getting copies made up and submitted in evidence, if that is desired.

Exam. WAY: It is desired.

Mr. TAYLOR: When will those copies be prepared?

Mr. GORDON: Just as soon as the mechanical labor can be performed. I will try to get someone on it tomorrow.

Mr. TAYLOR: For all purposes during this hearing we shall be permitted to use the original record, no doubt.

Mr. GORDON: They are here for any purpose to refer to.

Mr. TAYLOR: Thank you. Well, to save time, I think we should offer for identification and as evidence the—

Exam. WAY: Well, I think you can refer to it, Mr.

121 Taylor. It can be described as the—whatever it is.

Mr. GORDON: These are office records, Mr. Examiner, and I think you appreciate that under the law we cannot permit them to go into evidence even for identification.

Exam. WAY: I think you can refer to them for what they are, the minute books of the Association.

Q. (By Mr. TAYLOR) Section 7, "Other regular meetings" reads: "Other regular meetings of the Board of Directors shall be held without call on the second Wednesday of each month at 10:00 a. m., provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time next day thereafter ensuing which is not a legal holiday. Notice of all such regular meetings of the Board of Directors is hereby dispensed with."

Have you held regular meetings each month since the Association was incorporated, Mr. Ernst?

A. We have held quite a few, I don't know if we have held them every month.

Q. Were those meetings for the purpose of managerial considerations?

A. Yes, sir.

Q. Now, Section 14, "Fees and Compensation," reads: "Directors shall not receive any stated salary for their services as Directors, but, by resolution of the Board, a fixed fee, with or without expense of allowance, may
122 be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee or otherwise, and receiving compensation therefor."

Have you drawn any fees, Mr. Ernst, for attending meetings of the corporation since it was formed?

A. I believe I answered that before "no."

Q. That includes the corporation?

A. Yes.

Q. You answered as to the old Association before, I believe. However, does not this provision permit you directors to assign yourself fees, if you do.

Mr. GORDON: I object. Argumentative. The record speaks for itself.

Exam. WAY: Yes. I think in that particular case the record does speak for itself.

Q. (By Mr. TAYLOR) How many positions do you hold in that Association, Mr. Ernst?

A. (No response.)

Q. It is noted here in the Section that I have just read that you Directors may also serve in other capacities with the corportion. Do you hold any other position besides the Secretary and Treasurer and Director?

A. No.

Q. How many officers have been appointed since
123 the Association was incorporated?

A. Say that again, please.

Q. How many officers have been appointed by the Board since the Association was incorporated? What I mean: There is the office of general manager held by Mr. Olson.

A. Yes.

Q. What other employees, if he is an employee, do you have?

A. Well, the only one would be our Executive Secretary

Q. And who else?

A. Well, I think that is all.

Q. And I suppose the same goes for the corporation, as you understand it, with respect to the old Association, that Mr. Olson is paid by retaining certain amounts based on volume of freight handled by each shipper, and he, in turn, compensates Mr. Sol Smith on the basis of $200.00 as his salary.

A. As near as I know.

Q. Referring to Section 9, "Treasurer," I read: "The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board of Directors."

Have you made any such deposits, Mr. Ernst?

A. Have I?

Q. Yes.

A. No.

Q. As a matter of fact, you have not handled any moneys, have you?

124 A. No.

Q. Reading further, the balance of Section IX or: "He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the President and Directors, whenever they request it, an account of all his transactions as Treasurer and of the financial condition of the corportion, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the By-Laws."

Have you ever rendered any report of the accounts of the corporation as required in that Section, Mr. Ernst?

A. I have not.

Q. Has the Board of Directors ever asked for such a report?

A. (No response.)

Q. I don't believe I got your answer.

A. That question is—I am starting—of course, if you want me to answer that, I will say, "no."

Q. The answer is "no?"

A. Yes.

Q. As Treasurer of the corporation have you ever caused an audit to be made of the accounts of Mr. Olson by any auditing firm?

A. I have not.

Q. That is all, Mr. Ernst.

125 Exam. Way: Have you any questions?

Mr. Gordon: Yes, I have some questions. Now, in view of the fact that I assume that counsel for the inter-

venor will be permitted to cross examine, I think that it would be proper that his examination precede mine.

Exam. WAY: Yours will be redirect examination?

Mr. GORDON: Mine will be cross examination, but I take it that the interests of the Freight Forwarders Institute is an adverse interest to mine, and I think his examination should precede mine.

Mr. AMES: Shall I proceed, Mr. Examiner?

Exam. WAY: Yes.

Cross Examination.

Q. (By Mr. AMES) Mr. Ernst, you said a moment ago that you had had Directors' meetings for the purposes of discussing managerial considerations. Will you cite me one meeting at which those considerations were discussed, and tell me what considerations they were? Just reduce them to practical language. What managerial considerations did you discuss at any meeting?

A. At any meeting?

Q. Yes.

Mr. GORDON: I object to that on the ground that the minutes are the best evidence. The minutes are here and available.

126 Q. (By Mr. AMES) About the question of considerations, if you had discussions of managerial considerations or had a meeting to discuss managerial considerations, it would show in those minutes? Is that correct?

A. Yes.

Q. You also testified that since the incorporation of this Association the business has been controlled by the Board of Directors. Just how does that control manifest itself? Is that also shown in the minutes?

A. Yes.

Q. And if you have exercised any effective control it will reflect itself in those minutes which are going to be introduced in evidence?

A. Yes.

Q. Now, Mr. Ernst, you as a member have shipments made through this P. C. W. A., do you not?

A. Yes, sir.

Q. Let me ask you this: How do you settle with the Association or with Mr. Olson? What basis of charge or what basis of payment do you make?

A. I don't make any payments.

Q. Do you reimburse—call it whatever you want to,—advance or reimburse the Association? Is it correct to say

you reimburse them on the basis of the true forwarder rate from point of origin or the through rail rate, whichever is lower?

127 A. (No response.)

Q. Is that the initial settlement that you make with the office of Mr. Olson?

A. I think we are charged regular rate, and then we receive the rebate from the P. C. W. A. for the difference in the actual cost.

Q. You are billed by Mr. Olson's office, are you not, for the charge you advanced to them? Isn't that your regular practice?

A. We don't advance anything to them.

Q. Well, how do you pay Mr. Olson? Do you get a bill from him for freight?

A. Yes.

Q. How is that freight charge based?

A. (No response.)

Q. What is it based on?

A. As far as I know, regular rates.

Q. Regular what rate?

A. Carload or—

Q. Regulate forwarder rate?

A. Yes, so far as I know.

Exam. WAY: Well, do you know? We want to get this thing straight. If you don't know, I don't want you to say how it was based or say it was based on something else.

The WITNESS: Yes.

128 Q. (By Mr. AMES) Let me give you a specific shipment. Do you ship gaskets?

A. Yes.

Q. Do you receive gaskets?

A. Yes.

Q. It is my understanding there is a forwarder's rate on gaskets of $2.70.

Exam. WAY: From where?

Mr. AMES: From Chicago to Los Angeles.

Q. (By Mr. AMES) In settling with Mr. Olson, would that be the basis for your settlement of that particular commodity?

A. The chances are very good that would be prepaid.

Q. Let us take a shipment that isn't prepaid, and the forwarder rate is $2.50. Is that the basis on which you settle with Mr. Olson?

A. I believe that is it, yes. We settle on the regular rate.

Exam. WAY: Just a minute. What is the regular rate? Is that forwarder rate or carload rate or less than carload rate or what?

Mr. AMES: I am not talking about the readjustment now.

Q. (By Mr. AMES) You get a bill from P. C. W. A., do you not, when you make a shipment?

A. You mean when we get a shipment?

Q. Yes.

A. You mean the freight?

129 Q. Yes.

A. We pay the regular forwarder's rate.

Q. In the first instance?

A. Yes.

Q. Now this 15¼ cents that you talked about as a deduction from that, is that a deduction of Mr. Olson's commission? Does that come out of the remittance you pay to him?

A. Yes.

Q. All right. But when you began using this Association, were you using the services of regular forwarders other than the P. C. W. A.?

A. Yes.

Q. At the present time, Mr. Ernst, are you using the regular forwarders on a portion of your business?

A. Yes.

Q. You are, you say?

A. Yes.

Q. Now, how do you make the selection as between the P. C. W. A. and on the regular forwarder? That is, how do you determine which business shall go to which?

A. Generally we don't have a thing to say about it. The manufacturer ships the way he wants it.

Q. Do you have any control over the routing at all?

A. The control that we have is "Ship by P. C. W. A."

130 Q. You mean to say you have control over the routing of the precise tonnage, to use P. C. W. A., or is that your testimony?

A. No, it isn't, because when you say we have control that takes in a lot of territory, because the manufacturer might say, "No, we won't ship that way" and then I have no control.

Q. Well, I take it, in other words, you have control over the traffic that moves over P. C. W. A. Isn't that correct?

A. No, not necessarily.

Q. Well, are you playing with words? You do instruct your consignor to ship P. C. W. A. all traffic that moves that way?

A. We ask them to.

Q. You must use it that way, or you can't use their services.

A. (No response.)

Q. Isn't that not correct?

A. Well, we could ship it some other way and get the merchandise.

Q. Well, let us not play with words. When you use the P. C. W. A., isn't it true that you instruct your shipper or consignor to ship via that instrumentality?

A. (No response.)

Q. Let us forget the "control." It is down to "instruct", is it not?

A. If you don't want to play with words, then that "instruct," is a little deep.

Q. Let us say request.

A. Yes, request. That is better.

131 Q. Now, how do you determine when to request a consignor to use P. C. W. A. and when do you just let him use his own judgment, or request him to use another company? How do you make the selection?

A. We try to ship everything P. C. W. A., but there is a lot of manufacturers that don't want to be bothered with it, and they ship any way they want to, and they always go right into Chicago or any other place.

Q. Do you have any criteria by which you ship P. C. W. A. in one instance or National or Acme or Universal in another?

A. The only time we don't use P. C. W. A. is when the manufacturer won't ship it that way, and we have no jurisdiction over it.

Q. In other words, you only use P. C. W. A. where you have control or where they will honor your request.

A. That is right.

Q. Well, in the absence of this service by P. C. W. A., can you use, if there were no such thing, you could use the regular forwarders in handling that business could you not?

A. Yes.

Q. You testified at one point that you started this Association because the regular forwarders were doing something to you. I don't know what you—I don't just remember what you said, but they weren't giving you service or something?

A. No, they weren't charging us prices alike, as I remember.

Q. You mean they were discriminating?

132 Q. Now, did you join this Association for the purpose of saving transportation expense?

A. Absolutely.

Q. You testified, I believe, that your Executive Secretary, Mr. Smith, is paid $200.00 per month? Is that your testimony?

A. Yes.

Q. Does Mr. Olson pay him that?

A. Yes.

Q. I haven't had an opportunity to examine your membership qualifications, but I believe that when your Association was incorporated that they were liberalized, were they not? That is, they were not as restrictive as they were before?

A. Well, there isn't not much difference.

Q. Well, now, let us see if there isn't much difference. Didn't you have a rule before that that 75 percent or more of their business had to be of the wholesale nature?

A. (No response.)

Q. Didn't you have that in your old Association?

A. Yes.

Q. Have you got it now?

A. I will have to look.

Q. Well, look. (handing document to the witness). I show you Article II, Section 1, of this By-Laws, and I will ask you to state whether that contains anything to the effect that a member must be engaged in a business

133 involving 75 percent or more of a wholesale nature?

A. No, it does not.

Q. And does it not also contain the general expression that they shall be "engaged in business as wholesalers, or such other business or activity as may be approved by the Board of Directors?" Does it contain that provision?

A. Yes.

Q. Well, wouldn't you call that a liberalization from the old restriction?

A. Yes, to a certain extent.

Q. I thought you would. Now, at whose instance was that liberalization made?

A. I don't remember.

Q. You don't remember. You are on this Board of Directors who control this company, are you not?

A. Yes, sir.

Q. And you don't remember that point?

A. I don't know who made it.

Q. Well, tell us what you do know about it. Do you know anything about it?

A. I know that that particular qualification of membership had quite a little discussion among all of us. Who was the one that brought it up, I can't answer.

Q. You don't know who brought that up.

A. No.

134 Q. Now, in connection with this proposition of whether the Board of Directors or Mr. Olson routed this business, let me ask you these questions, and I am asking you now as a receiver of freight through the office of this association.

When you have any difficulty over loss and damage, does Mr. Olson handle that for you?

A. Yes.

Q. Does Mr. Olson or his agent at Chicago arrange for the inbound transportation to Chicago, or do you do that personally?

A. Well, as far as we are concerned, we have advised the manufacturer to ship to Chicago through P. C. W. A.

Q. Who arranges for the truck operator to haul it in, you or Mr. Olson?

A. I don't.

Q. Who arranges for the consolidation of the shipment into carloads? Do you do that or Mr. Olson or his agent do it?

A. Agents, I think.

Q. You think? Don't you know that the Transportation Terminal Company consolidates it at Chicago?

A. Yes, that is right.

Q. Now, who arranged for the railroad transportation to the Pacific coast? Do you do that or Mr. Olson or his agent at Chicago?

A. I don't.

Q. Who arranges for the distribution of it when it

135 gets to destination?

A. (No response.)

Q. Does the association or Mr. Olson or you?

A. I don't.

Q. You don't, of course, bill yourself for freight. That is done by the office, isn't it?

A. Yes.

Q. Well, just what do you do as a Director to control the method of doing business of this Association? I have given you the five elements involved in the business of freight forwarding, and you have told me that as one of the Board of Directors you control this business. What do you do to control it when he does all these things?

A. Well, spend about three or four hours at each Directors' meeting.

Q. You spend about three or four hours at each Directors' meeting, and what do you do at those meetings in the way of handling and routing of traffic matters.

A. Routing and traffic matters?

Q. Well, any operating matters, what do you do?

A. Well, we generally look at applications. We look at them so and see if they are acceptable, and we reject them.

Q. I am not talking about memberships. I am talking about physical operations. What do you do in these Directors' meetings concerning the physical operations
136 of getting a shipment from Cleveland, Ohio, to your plant?

A. That we don't do—I don't do anything towards that.

Q. Well, have you ever been present when a Board of Directors, as such, has done anything toward that?

A. You mean directly, or direct somebody else?

Q. I mean directly.

A. No.

Q. Is it true that Mr. Olson handles all the details of those operations?

A. He is general manager.

Q. Well, answer my question please: Isn't it true that he handles all the details of those operations?

A. What do you mean "operations?"

Q. I am talking about the assembling of freight at Chicago or its movement into Chicago, its railroad movement beyond, its distribution at destination, the collection of charges, the payment to the railroad or trucking companies, the handling of damage claims, isn't it true that he does that all?

A. Yes.

Q. Well, when you pay this regular rate to Mr. Olson, whether you call it an advance or whatever you call it, upon delivery of your shipment, you pay a Federal tax on that.

A. I don't know.

Q. Do you have any freight bills?

A. Yes.

Q. With you?

137 A. No.

Q. If the regular forwarder rate, which is used as a basis for your payment to Mr. Olson, is $2.50, do you know whether or not you added to that in your settlement with Mr. Olson a Federal tax, transportation tax?

A. That I can't answer.

Q. Would you be kind enough to produce at this hearing a paid freight receipt, showing payment by you to Mr. Olson of any shipment you may select, so that I may ascertain and the Commission may know whether you are paying a Federal tax or not?

A. I would be glad to.

Q. Will you have that tomorrow?

A. Yes.

Q. A representative freight bill.

A. Yes. We will try to.

Q. Did you ever instruct Mr. Olson or anyone in the organization to route your freight with P. C. W. A. as consignee at Los Angeles, care of Pacific Coast Wholesalers' Association?

A. No.

Q. You never instructed him to handle your freight in that way?

A. No.

Q. Do you issue any instructions to Olson as to the operating details of your shipments, or do you leave

138 that matter to him? I mean by that now, Mr. Ernst, if there are trucking companies between Cleveland and Chicago and you want to assemble at Chicago, did you ever tell him what particular trucking company to use into Chicago?

A. No.

Q. You leave that detail to him, do you not?

A. Yes.

Q. And you leave the railroad which hauls it from Chicago to Los Angeles to him, do you not?

A. Yes.

Q. You never had a Board of Directors' meeting to tell him to use a particular railroad, did you?

A. Not that I know of.

Q. I know it is laughable. You never did, did you?

A. No.

Q. You have several times during the course of this hearing described yourself as Secretary and Treasurer *pro tem*. Are you also a Director *pro tem*?

A. No, I don't think so.

Q. Well, how actively did you function as a Director?

A. Attend every meeting where I can.

Q. You have attended every meeting where you can. Now, that is a little equivocal. Have you attended most of them?

A. Yes, most of them.

Q. In spite of that attendance, you have expressed
139 a lack of knowledge as to many of the details of this operation. That is no question.

A. What?

Q. In the attendance at all these Directors' meetings, have you undertaken to familiarize yourself with the income, the total income received by Mr. Olson out of what is partially your freight?

A. No.

Q. Have you undertaken to inform yourself of how much Mr. Olson receives as you expend?

A. No.

Q. You haven't interested yourself at all as to what he might be making out of your freight?

A. That is right.

Q. Do you know how much of an office force Mr. Olson has?

A. No.

Q. Do you know how much he pays any of them?

A. No.

Q. Do you know whether he pays them anything at all or not?

A. No.

Q. I believe you testified, Mr. Ernst, that you were first contacted in this matter by one Mr. Colyear. Is your recollection still correct on that? Is that still a correct recollection that you were first consulted by Mr. Colyear in this matter.

140 A. I think so.

Q. That is, the first time you changed from your old practice into this Association you did it based on a discussion with Mr. Colyear?

A. That is right.

Q. Do you know who had discussed the matter with Mr. Colyear?

A. I think Sol Smith.

Q. Sol Smith. Well, to get to the point directly, who originally conceived this idea, do you know?

A. Of this Association?
Q. Of this Association.
A. Mr. Colyear.
Q. And you don't know whether anybody talked to him or not?
A. No.
Q. Has Mr. Colyear ever undertaken to run the Association?
A. Well, he did—
Q. That is, in the sense that Mr. Olson runs it?
A. Well, he had plenty to do with it when he was alive.
Q. Oh, is he deceased?
A. Yes. He had plenty of experience with the forwarding of freight.
Q. Well, when was this first contact made with Mr. Olson?
A. Well, that question—I would have to be a magician to answer it.
Q. Well, was it after the suggestion was made by
141 Colyear or was it before?
A. After.
Q. Colyear, I believe you testified, that Colyear has never functioned as your general manager.
A. No, he functioned as President.
Q. And then you testified before that after consideration of the matter "We decided to form an Association." Who do you mean by "we?"
A. Colyear, myself, Chanslor & Lyon, Gasket Supply House—about seven.
Q. At that time you were just discussing the matter. When did you first reduce it to a definite Association? Was that in 1935?
A. I believe it was in 1934.
Q. 1934?
A. I think so.
Q. And at that time you employed Mr. Olson, did you not, as your general manager?
A. I believe that is correct.
Q. Just what contact does Olson have with this Board of Directors? Does he attend your meetings?
A. Yes.
Q. He does?
A. (No response.)
Q. What other contact does he have?

142 A. What do you mean?

Q. Well, how does he operate or cooperate with the Board of Directors? Do they have any joint functions or business? What is his relation to it? Do you regard him just as an employee?

A. Well, a general manager generally is a little more than an employee.

Q. What do you mean?

A. Your question is kind of hard to answer.

Q. I don't mean, by using the word employee, I don't mean anything odious. A one hundred thousand dollar a year executive might be an employee. But do you regard him as an employee?

A. Yes.

Q. Now, as a Director of your Association, partially responsible for running it, can you describe for me the items of expense which are deducted by Mr. Olson's office from the payments you first make to him when you get your shipment?

A. No, I can't.

Q. Cannot do that? In answer to one of the Examiner's questions, you said that in the past members had been accepted, and you did not answer your requirements in your By-Laws that you had at times accepted such members. What are the qualifications of a new member? How do you go about making your selection?

A. Well, in the first place, it has got to be voluntary.

Q. What.

A. It has got to be voluntary. He has got to make the application.

143 Q That has to do with the application. I am talking about the qualifications of the new member. What makes him desirable and what makes him not desirable?

A. Anybody that's in our line of business, of course, they could be hardware or sporting goods or anything along those lines, a corporation or company, that would have a reasonable amount of volume would be desirable.

Q. Well, you would regard a wholesaler as a desirable member, would you not?

A. A wholesaler?

Q. With a large potential volume of forwarder freight? That would be one desirability, would it not?

A. Not necessarily.

Q. Now, tell me why it wouldn't.

A. Well, we have rejected plenty of them.

Q. Tell me somebody you have rejected who has a large volume of bracket 1 and 2 freight.

A. I can't remember right now.

Q. Will you agree with me that a large volume of potential forwarder freight would make a potential member, a desirable member.

A. Not necessarily. Firestone was more or less rejected, and they had plenty of volume.

Q. What do mean "more or less rejected?"

144 A. They shipped through the Association at one time, and now they don't.

Q. Why did they get out?

A. We mutually agreed, I guess, to dissolve partnership.

Q. Why did you do that?

A. I don't remember the details of it.

Q. You mean a large amount of potential tonnage would make a member an undesirable member, do you?

A. I didn't say that.

Q. A shipper who had a lot of tonnage would be desirable, wouldn't he?

A. (No response.)

Q. That is, if he has a like forwarder tonnage, would that be a lot of stuff under a forwarder movement?

A. That would depend somewhat on location. For instance, if we had a member or two, say, in Portland, and somebody wanted to get into our Association in Portland, and these two members of ours said, "No", we wouldn't take him in.

Q. That would be a competitive reason between the members and the prospective member?

A. Might be competitive or it might be they wanted to shut merchandise off that they didn't—

Q. You give me your own guess, just what you think would be desirable qualifications for any prospective member. You just tell me.

145 A. (No response.)

Q. If you were going out to look for a new member, what would you look for as desirable qualifications?

A. Well, in the first place I wouldn't go out to look for him.

Q. Well, if you did?

A. Well, that's—I presume I would look qualifications like our present members.

Q. Well, now, is one of those qualifications a substantial volume of tonnage?

A. Some.

Q. You had at one time in your By-Laws, didn't you, or in your qualifications of membership that there must be a minimum amount of tonnage per month, didn't you, under the old Association?

A. No, not that I remember.

Q. I thought I saw it in the minutes. Of course, I don't have these exhibits. I have to borrow them once in awhile. You had a different kind of membership fee, based on the amount of tonnage.

A. Yes.

Q. Well, now, you say that volume of tonnage may or may not be a desirable quality in a new member or prospective member. Now, give me something else besides the tonnage, the volume, that would make a man desirable.

A. What do you mean "besides tonnage?"

Q. Well, you said tonnage may or may not enter
146 into the picture. So I am trying to find out what else might.

A. Well, we have one member where his tonnage is very limited, but he is strictly a wholesaler, wholesale jobbing house, and therefore he is eligible.

Q. Well, I am speaking of volume of tonnage.

A. Well, we like to have members in the Association that are—have a good representation, and that you like to mingle with. I don't like to mingle with people that sell potatoes over on the East side.

Q. Well, any other qualifications?

A. That is about all.

Q. Is it true that your Association limits your handlings to certain rate limitations or bracket limitations?

A. No. I think we ship anything, haul anything.

Q. In any brackets?

A. For ourselves. For the members of the Association.

Q. You mean for the member the P. C. W. A. will haul freight in any bracket has no limitation on the rate?

A. I can't remember that.

Q. You are a Director now and helping to run the company. Can't you answer that?

A. Yes, I know. I know.

Q. I believe it was covered by Mr. Taylor's questions, but I am not certain. Does the Association, as such, pay

any of the incidental expenses incurred by Mr. Olson in running the details of your business?

147 A. State that again, please.

Q. Does the Association, as such—

A. "As such?" What does that mean?

Q. Pay any of the expenses of Mr. Olson, clerical help, or whatever he wants, he needs, to handle the details of your business, or does Mr. Olson pay them out of this 15¼ cents deduction?

A. Pay them? What do you mean by "them?"

Q. If he has to have any help in his office, a stenographer?

A. He pays them.

Q. The P. C. W. A., as such, does not pay any help?

A. No.

Q. Now, you spoke at one point of your testimony about the Associated Shipbuilders, and I believe you said in your opinion they were wholesalers.

A. (No response.)

Q. How did you arrive at that conclusion that the Associated Shipbuilders Company is a wholesaler?

A. Well, of course, we are in a war, and the shipbuilding company does build ships, but—and sell them by wholesale to the United States Government. That is the best definition I can give you on the Associated Shipbuilders.

Q. You are not making a point, are you—

A. No.

Q. —that the material they receive through your service is retailed out to the trade?

148 A. No, but it saves the government quite a little money.

Q. I am not talking about whether they are wholesalers or not. They are not wholesalers in the sense that they receive tires in volume and retail them to the trade?

A. Oh, no, they just manufacture ships on a wholesale basis and sell them to the government.

Q. And that same answer would apply to the California Shipbuilding Company, would it not?

A. Yes, sir, that is the reason they were taken in.

Q. May I see that exhibit that has the list of members? (Document handed to counsel.)

Mr. Ernst, do you know whether in making settlement with the railroads who haul your traffic from Chicago, do you know whether the P. C. W. A. pays any Federal tax on that movement?

A. I don't know.

Q. You don't know.
A. No.
Q. It is true, is it not, that when this Association first started that practically all of your membership was composed of people who dealt with automotive supplies?
A. Well, equipment—hardware.
Q. Equipment and automobile equipment?
A. And supplies.
Q. And supplies and hardware?
A. Yes.
149 Q. Now, how many of the original membership dealt with hardware?
A. We handle hardware.
Q. You do?
A. Yes, everybody has it.
Q. Are you speaking of hardware as synonymous with certain hardware equipment?
A. Yes.
Q. Or just of hardware as such?
A. Well, a lot of hardware that a wholesale hardware house handles, too.
Q. Of course, you term "hardware" in the sense that a bumper of an automobile may be hardware.
A. No, bolts and screws.
Q. But not in the sense that hardware is a cross-cut saw or snow-shovel, or things of that kind?
A. No.
Q. You mean by hardware the type of thing that is handled by automotive equipment companies, which could be designated as hardware?
A. Yes.
Q. The Associated Shipbuilders engage in shipbuilding for the government?
A. As far as I know.
Q. Automoblie Service Company. What business is that in?
A. Well, that is just what it says.
150 Q. Is that automotive equipment?
A. Yes, sir.
Q. Ballou & Wright?
A. That is automotive.
Q. W. H. Bintz Company?
A. I don't recollect them.
Q. Now, Borg Warner Service Parts Company. I imagine that is automotive equipment.

A. Yes.

Q. California Shipbuilding Corporation is the same as Associated, I take it.

A. Well, the State of California classifies them as a wholesaler.

Q. The State of California does?

A. Yes, gives them a wholesaler permit.

Q. Now, the Chanslor & Lyon Company. What is their business?

A. Automotive.

Q. Colyear Motor Sales Company?

A. Automotive.

Q. A. H. Cox and Company.

A. Where is that at?

Q. At Seattle.

A. That would be automotive.

Q. That would be automotive?

A. I think so. I wouldn't swear to it.

151 Q. You wouldn't swear to it.

A. No.

Q. Well, you are swearing here. Don't you know?

A. Am I?

Q. You were sworn, weren't you?

A. Well, then, I would say, "I don't know."

Q. The Dixon Valve & Coupling Company.

A. I don't know.

Q. Ducommun Metals and Supply Company.

A. That is general hardware.

Q. Is it automotive equipment?

A. No, it is hardware, and some automotive equipment.

Q. Now, your own, Featherstone's, Incorporated. That is automotive equipment?

A. That is automotive equipment.

Q. Fey & Krause.

A. That is automotive.

Q. The Caligher Company, Salt Lake City?

A. Caligher? I don't know.

Q. The Gasket Supply House?

A. Automotive.

Q. J. E. Haseltine and Company?

A. That is automotive.

Q. Kenworth Motor Trucks Corporation?

A. That would be automotive.

152 Q. Lambert Company?

A. That is automotive.

Q. The Lang Company. That is at Salt Lake City.
A. I don't know.
Q. Marshall-Wells Company, Portland.
A. Hardware.
Q. Not automotive, but hardware.
A. Hardware and automotive.
Q. Mendenhall Auto Parts Company. Is that automotive?
A. Yes.
Q. The Mine and Smelter Supply Company, Portland. Is that automotive?
A. That could be classified as automotive.
Q. What else?
A. Mine supplies.
Q. All kinds of mine supplies?
A. Yes.
Q. Motor Hardware and Equipment Company.
A. Automotive.
Q. Motor Rim and Wheel Service of California?
A. Automotive.
Q. Northern Commercial Company?
A. I don't know what that is.
Q. Northwest Engineering Company, Green Bay, Wisconsin?
153 A. I don't know what they make.
Q. All right. Oregon Marine Supply Company.
A. That would be hardware and marine supplies.
Q. Pacific Marine Supply Company? That would be the same?
A. Yes, sir.
Q. Piston Service, Incorporated.
A. Automotive.
Q. Production Equipment Company.
A. Yes, automotive.
Q. Puget Sound Bridge & Dredging Company.
A. Well, dredging outfit, I suppose. I don't know.
Q. The Salt Lake Hardware Company. Hardware?
A. Yes, sir.
Q. Schwabacher Hardware Company. Same thing?
A. Yes, sir.
Q. Seattle Hardware Company. Hardware?
A. Yes, sir.
Q. Square D Company?
A. I don't know.
Q. Shields-Harper.

A. Automotive.
Q. Star Machinery Company.
A. That is automotive.
Q. What else?
A. Hardware.
154 Q. Automotive and hardware. Anything else?
A. That is all I know.
Q. Strevell-Patterson Hardware Company. That is Salt Lake City.
A. That is hardware.
Q. Washington Machinery and Supply Company, Spokane, Washington.
A. Hardware and automotive.
Q. Wiggins Company, Incorporated.
A. Automotive.
Q. Yakima Hardware Company. Hardware?
A. Yes, sir.
Q. How about Woodbury & Company? Just came in in January. Is that the soap company?
A. That is automotive.
Q. Woodbury Company?
A. (No response.)
Q. Is it automotive equipment?
A. Automotive.
Q. Do you know whether the minutes that are in evidence here, Mr. Ernst, will show whether or not Olson received instructions from the Board of Directors as to terminal arrangements at Chicago before he made that?
A. State that again, Mr. Ames.
Q. Do you know whether the minutes in evidence, or any of them, will show whether or not Mr. Olson received instructions?
A. I couldn't answer that.
155 Q. You couldn't answer that?
A. No.
Q. If such instructions were given, I presume they would be reflected in the minutes.
A. Yes.
Q. Now, Mr. Ernst, tomorrow will you bring to the hearing room a receipted bill covering your advance to the P. C. W. A. on some representative shipment that you have received through their instrumentality?
A. You mean paid freight bill? Is that what you want?
Q. Yes.
A. Paid freight bill.

Q. Now, do you know anything about the details of the billing of this traffic, assuming a shipment originating in Cleveland and moved by motor truck to Chicago for consolidation and movement beyond. Do you know anything of the details of how that shipment is billed, what kind of Bill of Lading is issued at Cleveland?

A. I am afraid not.

Q. You don't know that?

A. No.

Q. Do you know of any of the details as to the truck movement or the movement into Chicago, by whatever facilities are used? I am talking about the details of the movements now.

156 A. What do you mean "details?"

Q. Well, what trucking company handles it or how the selection is made or how it is routed.

A. I know we have certain trucking companies that have been arranged for to do the trucking into Chicago.

Q. What trucking companies do you use?

A. I can't recall them, offhand.

Q. Do the trucking companies issue a Bill of Lading?

A. I don't know.

Q. You don't know?

A. No.

Q. Do you know anything about the details of the consolidation at Chicago?

A. Physically? No.

Q. That is what I am talking about now, the physical operation.

A. No.

Q. Do you know anything about the billing out of Chicago into the Pacific Coast?

A. No.

Q. Do you know anything about the details of distribution after the traffic gets here?

A. No.

Q. When you order a shipment of automotive equipment from an Eastern producer, and at your request he uses the service of the P. C. W. A., the first contract with

157 that shipment, as far as operating details are concerned, is when it is delivered at your place of business, isn't it?

A. That is correct.

Q. Then you receive from Mr. Olson a freight bill.

A. Yes, sir.

Q. Does that freight bill indicate on it the initial kind of the shipment?

A. I don't know.

Q. Well, this freight bill you are bringing tomorrow will show that?

A. Yes.

Q. Bring any typical bill that you are using now on a shipment of less than carload merchandise which you have received through the consolidated facilities of your Association.

A. Yes.

Q. You will bring that tomorrow?

A. Yes.

Q. That is all I have, Mr. Ernst.

A. Just a regular paid freight bill?

Q. Yes.

(Witness excused.)

Exam. WAY: We will take a recess until 7:30 p. m.

(Whereupon, at 5:30 o'clock p. m. February 2, 1945, a recess was taken until 7:30 o'clock, February 2, 1945.)

158 (The hearing reconvened at 7:30 o'clock, p. m.)

Exam. WAY: The hearing will come to order.

J. H. ERNST, was recalled, and having been previously sworn, testified further as follows:

Cross Examination.

Q. (By Mr. GORDON) Mr. Ernst, you have referred to Mr. Colyear, and I believe had said that he was the man that you believed started the P. C. W. A. organization.

A. Yes.

Q. Did you know Mr. Colyear well?

A. Yes.

Q. He died, did he not?

A. Yes.

Q. About when?

A. Well, I think it was the latter part of 1943—the middle part—the latter part.

Q. Now, prior to 1935, did you know him well, or just casually?

A. Very well.

Q. Did you see him often?

A. Yes.

Q. Now, referring to the circumstances and things that transpired prior to the meeting, the first meeting for organization of P. C. W. A., which occurred, according to the minutes, Exhibit 2, in October, 1934, isn't it a fact that you saw Mr. Colyear frequently and had occasion to discuss with him your business affairs, as well as his, with reference to matters of transportation?

159

A. I believe that is correct.

Q. And isn't it a fact, Mr. Ernst, that about that time, during the regime of the NRA, that an increase in transportation rates was announced by the freight forwarders to become effective almost immediately?

A. I don't remember.

Q. And do you recall that Mr. Colyear, on his own initiative, decided to oppose that increase, and for that purpose employed the service of the traffic firm f Lorots & Olson to file a brief with the N. R. A., seeking a suspension of the increase in rates, and mailed copies of that brief to a large number of business concerns, including your own?

A. I don't remember.

Q. You don't recall that?

A. I can't. There is something about it, but I can't—

Q. Well, it is a fact, isn't it, Mr. Ernst, that prior to this meeting in October, 1934, when you and the other individuals representing these automotive concerns and Mr. Pedder, representing Ducommun Hardware house, that prior to that meeting you had had talks with Mr. Colyear about the desirability of gathering an association together to ship your own freight?

160

A. That is correct.

Q. Now, isn't it also true that prior to that time you had not known Mr. Olson at all?

A. No, I knew him before.

Q. Well, did you have any business dealings with him prior to that time?

A. Through another channel. Through auditing freight bills and so forth, through another firm that I don't recollect the name.

Q. That was Carmichael Traffic?

A. Yes.

Q. He was associated with that organization?

A. Yes.

Q. And they were general consultants and did auditing of freight bills?

A. Yes, and we had discontinued their service quite awhile before that.

Q. Aside from that you had no occasion to employ Mr. Olson in any way, had you?

A. Not that I know of.

Q. But isn't it true that Mr. Olson and his then associates, Mr. Loretz, were acting as traffic managers for Colyear?

A. I believe so.

Mr. AMES: Mr. Examiner, I object to this method of examination. This is a kind of cross examination, but
161 it is highly leading. This man is really not cross examining. He is examining his own witness and this method of questioning "isn't it true that this and this happened" is certainly objectionable. I don't think this is cross examination.

Exam. WAY: I am sure that it is not cross examination. However, he is developing the history. If it isn't too long, I would say that it is not particularly objectionable. He is bringing out the history and the start of all this business.

Mr. AMES: I have no objection to that, but he is doing it in his own language and asking the witness to corroborate him, and he has filled in several times, and the witness is corroborating him.

Exam. WAY: I think you should ask the question in a different form. You are leading the witness.

Mr. GORDON: I am deliberately leading the witness, but I think it is permissible on cross examination. The Commission on Saturday called Mr. Ernst as their own witness, and I think I am permitted, under the rules of evidence, to cross examine him and to lead him.

Exam. WAY: Well, if you haven't too much of it, go ahead, we will probably make better time.

Q. (By Mr. GORDON) Mr. Ernst, I believe you stated in some form or other that you did not handle any of the funds of the Pacific Coast Wholesalers' Association, unincorporated, notwithstanding the fact that you were its
162 Secretary and Treasurer. What did you mean by that?

A. By that I meant that we actually did not handle any funds.

Q. You mean cash or—

A. Cash funds, negotiable dollars and cents, or whatever you have.

Q. Do you recall ever signing or counter-signing any checks drawn on funds of the old Association?

A. Yes, sir.

Q. And did you do that as Treasurer of that organization?

A. Either Secretary or Treasurer.

Q. And was that done pursuant to any resolution passed by the Board of Directors designating how funds could be withdrawn from this account of the Association?

A. Yes.

Q. And prescribing who would sign and counter-sign?

A. Yes.

Q. Now, when funds were received from membership fees, do you know how they were received, whether they were in the form of cash, currency or check, from new members?

A. I believe mostly checks.

Q. Now, isn't it a fact that when those checks were received they were received and reported to the meeting of the Directors by the Executive Secretary, Mr. Sol Smith?

A. Yes.

163 Q. And can you state whether or not he was authorized and directed to deposit checks so received to the account of the Association?

A. I believe that is correct.

Q. That he was so authorized and directed.

A. (No response.)

Q. Answer audibly.

A. Yes.

Q. Well, isn't it a fact that you consider that Mr. Sol Smith, as the Executive Secretary, was doing the detail work on your behalf as Secretary and Treasurer?

A. That is right, yes.

Q. Mr. Ernst, during all the time that you have been a member of the Pacific Coast Wholesalers' Association both unincorporated and incorporated, isn't it a fact that each month you have received from the general manager of the Association and that corporation a statement of your tonnage handled for the preceding month, the charges that were made against that freight, and a statement of the savings accruing to your advantage, deduction of the charges?

A. Yes.

Q. Now, you have received those statements regularly, have you not?

A. Yes.

Q. Did you save them?

164 A. (No response.)

Q. Do you have those statements?

A. I can't answer that. That is up in the bookkeeping department.

Q. You don't have them with you here?

A. No.

Q. Well, when you received them, Mr. Ernst, did you take the trouble to look at them?

A. To—yes, I looked at them to see what the deductions were and the tonnage, and what my saving was, and I O. K.'d. them and I sent them up to the office, and that is the last I see of them.

Q. Did you check them as to the accuracy of the tonnage shown handled for you?

A. No, sir.

Q. Did you satisfy yourself that the statement was correct?

A. I was perfectly satisfied with it; otherwise I wouldn't have accepted it.

Exam. WAY: Answer the question.

The WITNESS: Yes.

Q. (By Mr. GORDON) Did you look at it and study it to see whether it was correct, a correct statement of tonnage and statement of charges and statement of refund was in the correct amounts?

A. I didn't verify them.

Q. You mean by that, Mr. Ernst, what?

165 A. Well, it would take considerable details to check our freight bills and everything that goes with it and find out the total, and I figured the office, our general manager was honest, and I accepted it face value and O. K'd. it.

Exam. WAY: The principal thing you looked at was to see what the total amount was and how much you saved? Is that it?

The WITNESS: And how much tonnage we had.

Exam. WAY: Is that all you did?

Q. (By Mr. GORDON) All right. Now, during the time that you were a Director, Mr. Ernst, do you recall that the Firestone Company was ever a member of the Association?

A. Yes, I believe they belonged at one time.

Exam. WAY: You mean Firestone Tire Company or Rubber Company?

The WITNESS: A rubber company.

Q. (By Mr. GORDON) Firestone Tire and Rubber Company, I understand is their full name.

Now, was Stewart Warner Company, do you recall that they were a member at one time, Stewart Warner Alemite Company?

A. Yes.

Q. Now, neither of those firms are members at the present time, are they?

A. No.

Q. And do you recall when they ceased to become members.

A. I do not.

166 Q. And do you know why they ceased to become members?

A. I don't think I do.

Q. I think you stated earlier that as to one of these firms you thought their membership was terminated by mutual consent, that you didn't agree, and that they were dropped.

A. No, I testified that they were dissatisfied, but exactly why they dropped out I can't say.

Q. Is it a fact, Mr. Ernst, that both of the firms whose names I have given you were dropped from the membership by action of the Board of Directors?

Exam. WAY: Well, now, he said he didn't know.

Q. (By Mr. GORDON) Well, then, in other words, as I recall it now, did they voluntarily withdraw, or were they dismissed from membership?

A. No. I don't know. That is different.

Q. I believe the question was put to you by the Examiner as to whether it was the custom of the Directors of the old Association to take in members who did not meet the requirements of the By-Laws. Now, isn't it a fact that for the most part your members that were taken in from time to time did meet the requirement of the By-Laws?

A. Yes.

Q. And those were the exceptions and not the rule, isn't that true?

A. You said, "most", and that is the case.

167 Q. It was only the exceptional case in which the members did not meet the requirements of the By-Laws and Constitution of the old Association? Isn't that true?

A. Yes, I think so.

Q. You were asked concerning payment of rents. Do you know whether or not any quarters were provided for the use of the Association at 2714 South Hill Street?

A. No.

Q. That is the Sol Smith's office?
A. (No response.)
Exam. WAY: Answer. Don't shake your head.
The WITNESS: I would say, "no."
Q. (By Mr. GORDON) 2714 South Hill Street is Sol Smith's office address, is it not?
A. Yes, sir.
Q. Is there a Board of Directors' room with a long table and long chairs around there?
A. Yes, sir.
Q. At that place?
A. Yes, sir.
Q. And is that the place where the Directors have met regularly?
A. Yes, sir.
Q. And they are privileged to meet there whenever they hold a meeting?
168 A. Yes, sir.
Q. Now, the Association hasn't paid the rent directly for that, has it?
A. (No response.)
Q. In other words, the Association does not pay the owner of those premises for the use of them?
A. No.
Q. Do you know whether or not those premises are provided for the use of the Association by Sol Smith?
A. I would say partially—not entirely.
Q. I don't mean exclusive use, but when the Association desires to have meetings those facilities and those premises are available to them? Isn't that a fact?
A. Yes, sir.
Q. Do you know whether Sol Smith has stenographic employees there?
A. Yes.
Q. In connection with that same office?
A. Yes.
Q. Are they called upon or used from time to time to do work for the Association?
A. Yes.
Q. I believe you said you had never been in Mr. Olson's quarters on Sixth Street.
A. Correct.
169 Q. However, has Mr. Olson ever been in the offices of the Association at 2714 South Hill Street?
A. Yes, sir.

Q. Many times?

A. Yes.

Q. And when he has come there, Mr. Ernst, will you state whether or not he has made verbal reports to the Directors of his activities that have occurred between the time of the particular meeting and the last previous meeting?

A. Verbal reports?

Q. Yes.

A. Yes, to a certain extent.

Q. And have the Directors asked him any questions about what he has been doing?

Exam. WAY: Just a moment. He said "To a certain extent." I want to know what he means by "to a certain extent."

The WITNESS: By that I mean his whole time was not taken up by making verbal statements.

Exam. WAY: What else did he do?

The WITNESS: Well, he had a portfolio with records and what have you.

Q. (By Mr. GORDON) Now, when Mr. Olson came to these meetings and he opened his portfolio and proceeded to tell the Directors what he had been doing, did he not?

A. That is correct.

170 Q. And did the Directors ask him any questions about it?

A. Quite a few, yes.

Q. And what there discussion among the Directors as to Mr. Olson's activities?

A. Yes.

Q. And did he make recommendations from time to time concerning the activities of the Association?

A. Yes.

Q. Were these recommendations discussed by the members?

A. Yes.

Q. And Mr. Olson was asked questions about them?

A. Yes.

Q. And after such discussions, was it customary for the Directors to take some action about it?

A. Yes.

Q. Now, in addition to that, did Mr. Olson from time to time, when he opened his portfolio at these meetings, make verbal reports to you as to the volume or tonnage and to the facts pertaining to the activities of the Association?

A. To me personally?

Q. To the Directors.

A. Oh, well, that's—I didn't get that. To the Directors?
Q. Yes.
A. Yes.
171 Q. And were those reports the subject of discussion among the Directors?
A. Yes.
Exam. WAY: Now, let me ask you a question there: Were these reports and these recommendations in the nature of proposals?
The WITNESS: The reports weren't. The recommendations, yes.
Q. (By Mr. GORDON) Now, did Mr. Olson from time to time make trips to Chicago and to the Northwest, including Portland, Seattle, San Francisco and Salt Lake City, in the interest of the Association?
A. Yes.
Q. And when he made such trips and returned, did he make any report, verbally, to the Directors about what he had done?
A. Yes, sir.
Q. And were those, the reports, the subject of any discussion among the Directors?
A. Yes.
Exam. WAY: Now, let me ask you again: When he made these trips, what was the purpose of the trips, soliciting business, or what?
The WITNESS: Was that question to me?
Exam. WAY: Yes, sir.
The WITNESS: Let's see. In most cases it was to go in and investigate applicants.
Exam. WAY: You mean applicants for membership in the—
172 The WITNESS: P. C. W. A.
Exam. WAY: All right.
Q. (By Mr. GORDON) In his investigation of those applicants, did he report to you as to the matters of their traffic and their tonnage and make recommendations to you as to whether or not they would be desirable members.
A. Is that to the Board or me, personally?
Q. To the Board.
A. I see.
Q. I am talking about the Board entirely.
A. You said me.
Q. I am talking to you, a member of the Board.
A. Yes.

Q. And did you use his recommendations in your deliberations as to whether or not the membership would be extended to the applicant?

A. (No response.)

Q. In other words, were his recommendations, did they enter into your considerations as to whether or not any applicant would be admitted to membership?

A. Yes, they would.

Q. Now, Mr. Ernst, in connection with these various trips taken by Mr. Olson, will you state whether or not the Board of Directors was ever asked to authorize the payment of Mr. Olson's expenses?

A. Yes.

173 Q. And do you know whether or not such expenses were authorized at the time to be paid?

Mr. Ames: Mr. Examiner, won't these minutes we have show all this?

Exam. Way: They should.

Mr. Ames: When I was questioning Mr. Ernst, it was understood that if the Board had made any authorization or recommendation to Mr. Olson or vice versa, those authorizations or recommendations were reflected in the minutes.

Exam. Way: I understood that to be true.

Mr. Ames: Now he is testifying about what happened in the Boards of Directors meeting. As I understand it, those minutes exist, and I don't think he should be permitted to elaborate on it under the best evidence rule. Are you intending to broaden the scope of your own minutes? Is that your intention?

Mr. Gordon: I intend to develop as well as I am permitted, to develop what happened. I indicated this morning that I was certain from certain matters that have been brought to my attention that all of the minutes have not been written up, and I think it is a matter of common knowledge that association minutes, even more emphatically than corporation minutes, do not necessarily reflect everything that occurred at a meeting, and I think that anyone who was in attendance and was there and knows what happened is entitled to say what happened.

174 that the record of the minutes is not the best evidence of what occurred. The testimony of who was there and who knows what happened is the best evidence.

Mr. Ames: Mr. Examiner, in my cross examination of Mr. Ernst I asked him whether the Board of Directors had anything to do with the details of these operations, and in

my cross examination I asked him to refer to one meeting and to give me one setup of instructions that that Board had ever issued to Mr. Olson regarding the physical operation of this company. I was told that the records would reflect that, and I desisted from that cross examination.

Exam. WAY: That is my understanding.

Mr. AMES: Now his lawyer is here seeking to impeach, if you please, his own minutes, and he is impeaching them by elaboration.

Mr. GORDON: That is not impeaching.

Mr. AMES: If the minutes reflect what happened, they reflect it, and if they don't they don't. If he is going to bring up by oral testimony what happened at these meetings, let us throw the minutes out and let me ask the questions that I started to ask him this morning. I think the minutes should be allowed to speak for themselves.

Exam. WAY: I think the minutes is the best evidence in this case of what happened. That together with the witness' testimony today to the effect that all of the
175 actions taken by this Association were reflected by the minutes.

Mr. GORDON: I think your Honor knows, and I am sure that counsel knows, that most corporate minutes and most association minutes reflect all of the discussions, all of the deliberations that occur at a meeting. Now they are open to reflect the corporate action taken after these things occurred, but we went through long examination today intended, apparently—intended, I should say, to show that the Directors, themselves, took no active part in the
176 affairs of the Association. Now, I seek to show what I am sure is the fact that they did take an active part, and I don't know how else to do it than by the line of examination that I am now making and to bring to this witness' mind the facts which he well knew, that the general manager reported in detail from time to time concerning the affairs of the Association, after which there was discussion and final action taken.

Exam. WAY: I can't help but observe one thing, and that is that the witness' memory has very much improved since this afternoon's session, and I think I will allow you to continue and allow Mr. Ames to continue his cross examination.

Mr. GORDON: That is entirely satisfactory.

Mr. TAYLOR: Mr. Examiner, at this point, if I may, in support of Mr. Ames' contention, I should like to ask, in

view of the discussion here presented, in view of the fact that Exhibit 2, which is the exhibit containing a copy of all minutes of meetings held by the unincorporated Association covering the eight-year period between October 10, 1934, to September 16, 1943, this exhibit contains altogether the recorded minutes of only 13 meetings. As I understand it, the Association during that period of time and all of that period of time employed Mr. Sol Smith as executive secretary. These records here indicate that he presided at most of these meetings, and I assume he recorded these minutes herein contained. I should like to re-
177 quest what Mr. Sol Smith did for his $200.00 a month salary during that period of time if he did not record the business proceedings of the Board of Directors.

Exam. WAY: I think you can bring that out just a little later, Mr. Taylor. We want to see what else the witness has to say. Go ahead, Mr. Gordon.

Q. (By Mr. GORDON) Mr. Ernst, you were asked some questions concerning meetings of the members of the Pacific Coast Wholesalers' Association, Incorporated. Now, is it your understanding that there has never been a meeting of the members of the corporation?

A. The corporation?

Q. Yes.

A. I thing the way that statement was put this afternoon wasn't put right. Yes. The new corporation held a meeting some time during 1945.

Q. That was in January, was it not?

A. Yes.

Exam. WAY: Can you say who was there?

The WITNESS: Where?

Exam. WAY: Can you say who attended that meeting?

The WITNESS: I will have to look at the minutes.

Exam. WAY: Are they in the minutes?

The WITNESS: Should be.

Mr. GORDON: They are written up and will be
178 submitted in evidence. I simply want to make it clear that the witness hadn't wilfully mis-stated the facts without knowing what he was saying.

Q. (By Mr. GORDON) As you explained to me at recess, you were answering with respect to what you thought was a question as to an annual meeting in 1944? Is that right?

A. That is correct.

Exam. WAY: Don't you recall being asked if there was ever a meeting of the members?

The WITNESS: In 1945?

Exam. WAY: At any time. During the life of the institution.

The WITNESS: Yes.

Exam. WAY: And your reply was "No", that there was no meeting?

The WITNESS: Of the membership at large?

Exam. WAY: Yes.

The WITNESS: Well, I believe I am correct; to the best of my knowledge that answer is correct.

Exam. WAY: That there never has been a meeting?

The WITNESS: Of the membership at large.

Exam. WAY: What do you mean by "membership meeting in the month of January?"

The WITNESS: That meeting comprised the Board of Directors and proxies from practically every member of the Association.

179 Mr. GORDON: Well, I think, ~~if the Examiner~~ please, I think the witness—

Exam. WAY: Well, now, he has answered it without any interpretation on it.

Q. (By Mr. GORDON) What do you mean by "meeting of the membership at large"?

A. By that I mean if the meeting was held in Los Angeles, we would have members from Portland, Salt Lake City, and San Francisco at the meeting in Los Angeles.

Q. You mean in which all the membership attended in person?

A. Yes.

Q. You mean to imply there never was a membership meeting at which some attended by proxy and some personally attended?

A. No, I didn't. We held plenty of meetings.

Exam. WAY: By proxy?

The WITNESS: (No response.)

Exam. WAY: Speaking about the membership now.

The WITNESS: (No response.)

Mr. AMES: He said "We have held plenty of meetings." What do you mean "plenty of meetings"? That doesn't look good on the record.

Mr. GORDON: I didn't hear that.

Mr. AMES: He said, "We held plenty of meetings," and I want to know when they held plenty of meetings.

The WITNESS: When? I would have to get the minutes.

Mr. AMES: What do you mean by "plenty of meet-

180 ings"? Take the corporation since 1943, how many meetings have you held?

The WITNESS: Oh, offhand, I would say one a month—one in six weeks.

Mr. AMES: I mean membership meetings, not Board of Directors' meetings.

The WITNESS: Oh, I will have to withdraw that.

Mr. AMES: You withdraw it, then?

The WITNESS: Yes.

Exam. WAY: Now, these proxies you are talking about from the members, those were for the purpose of election, were they not, of the directors?

The WITNESS: Yes, sir.

Exam. WAY: That was the only subject considered, that was the only thing they had proxies for?

The WITNESS: The proxies were for the election of officers.

Mr. GORDON: That is all the questions I have.

Exam. WAY: Mr. Ames?

Cross Examination (Continued).

Q. (By Mr. AMES) Mr. Ernst, first let me ask you whether you are familiar with the physical details of a freight forwarder operation?

A. No.

Q. Let me ask you this: At what meeting did the Board of Directors issue any instructions to Mr. Olson as to the physical operation of the forwarding business?

181 A. Our minutes should reveal that.

Q. We are beyond the minutes now. I have relied on them, and your counsel has taken you beyond them. I want you to tell me at what meeting they gave him any instructions, whatsoever, as to the physical operations of this business?

A. I don't remember.

Q. You don't remember that?

A. (No response.)

Mr. AMES: That is all.

Exam. WAY: Mr. Taylor, re-direct examination.

Re-direct Examination.

Q. (By Mr. TAYLOR) Mr. Ernst, I believe you stated this morning that you did not receive any proxies from members at this January, 1945, meeting of the Board of Directors, the annual meeting provided for?

A. In person, no.

Exam. WAY: Well, you mean to say by that that, as you stated this afternoon, you personally had received no proxies? The only one which you had was the one you owned yourself, or your personal proxy?

The WITNESS: And there was one in the office, the only one that I had was my own.

Q. (By Mr. TAYLOR) Were any proxies mailed to you in connection with the January, 1945 meeting?

A. No.

182 Q. Do you recall any application from any member for a proxy?

A. No.

Q. Well, referring again to Article IV, "Meetings of Members", Section 7 in the By-Laws of the corporation, it states:

"Proxies. Every member is entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such member, or his or its duly authorized agent and filed with the Secretary of the corporation; * * *"

Now, I don't see in your By-Laws here that there is any other provision made for a vote by proxy. So I am asking you at this time who did receive these proxies?

A. The executive secretary.

Q. The executive secretary, Mr. Sol Smith, who is not an official of the corporation?

A. (No response.)

Q. Is that correct?

A. What definition? Of the executive secretary, held in the corporation? An officer?

Q. I am asking you: Have you ever taken Mr. Sol Smith in as an official of the corporation? Has he been duly appointed an official of the corporation?

A. (No response.)

Q. Do your minutes, which you have before you, so indicate it?

A. I would think so, yes.

183 Q. Will you show us at this time, sir, where that was done by the Board of Directors?

A. That would take quite a little time for me to go through there.

Mr. GORDON: Do you mind if I—

Mr. TAYLOR: Go ahead, Mr. Gordon.

Exam. WAY: Assist him?

Mr. GORDON: Assist him, and point out. Well, I am directing the witness' attention to the minutes of the first meet-

ing of the Board of Directors held December 14, 1943, and to page 5 thereof, and on which appears a resolution having been adopted as follows:

"Resolved, That Mr. Sol Smith, Executive Secretary, and Mr. G. A. Olson, as general manager, be and they are hereby appointed and employed by the corporation and their compensation;" and so forth affixed."

Mr. TAYLOR: Yes, but were those gentlemen corporate officials? You have stated before they are corporation employees.

Mr. GORDON: I will stipulate with counsel that they are not what you might call executives of the corporation. They are employees of the corporation.

Mr. TAYLOR: Thank you, Mr. Gordon.

Mr. AMES: Did you stipulate they are not officers of the corporation?

184 Mr. GORDON: They are not officers of the corporation.

Q. (By Mr. TAYLOR) Now, Mr. Ernst, with respect to those checks which you now say you countersigned as secretary and treasurer of the old Association, at what period of time were those checks signed?

A. I believe during the life of the Association.

Q. During the entire life of the Association?

A. You would have to go back to the minutes. I can't answer that.

Exam. WAY: So the minutes would not reflect the fact that you signed the checks, would they?

The WITNESS: Well, the minutes might have reflected them at the time that I was—

Exam. WAY: Secretary and treasurer?

The WITNESS: Designated or authorized to sign checks. I don't know—or countersign them, rather.

Q. (By Mr. TAYLOR) As a matter of fact, the period of time during which you countersigned checks in the name of the P. C. W. A., was that period of time, was it not when the Association was in its formation and when it was necessary to provide certain funds for Mr. Olson's expenses and which funds were prorated among the organizers and the early members and before such time as Mr. Olson was permitted to make these early deductions from the freight accounts settlements? Wasn't that the period of time

185 that you did countersign checks?

A. I think that is correct.

Q. And at that time did you not countersign checks with the president of the Association, the then Mr. Colvear?

A. I believe the origin, or the first time, was after the Association was formed. I think that is correct. If it held good for the entire period, I can't answer that.

Q. Did you ever countersign any checks with Mr. G. A. Olson?

A. To the best of my knowledge, no.

Q. Thank you. Then you have not countersigned any checks since May 16, 1942, have you?

A. Yes.

Q. You have countersigned checks since May 16, 1942?

A. (No response.)

Q. Covering what account?

A. I don't know what the name of the account is, but it has to do with travelling expenses of Olson.

Q. In whose name is that account maintained?

A. As far as I know, the P. C. W. A.

Q. Well, who else signed those checks with you?

A. Mr. Sol Smith.

Q. And is the account maintained by Mr. Sol Smith?

A. Yes.

Q. And what is the source of the revenues contained in that account?

186 A. Let us see, I don't know as I can answer that.

Q. Well, what kind of an account is it? We would like to know. What caused the account? You say it was a P. C. W. A. account. Well, what is it?

A. I think the money is derived from membership dues—or memberships—not dues.

Q. Only memberships?

A. I think so—I can't answer.

Q. That is, that is the $200.00 which was collected from each member?

A. That is too deep for me. I can't answer it.

Q. All right, then. Thank you.

A. It is too deep.

Q. Now, Mr. Gordon asked you a moment ago some questions relative to the furnishing of monthly financial reports by Mr. Olson. The financial reports received by you each month from Mr. Olson covering only the freight of the Featherstone Company of which you were president?

A. Monthly reports.

Q. Did you, as treasurer, receive and check monthly reports of individual accounts of other members?

A. No.

Mr. Taylor: That is all.

Mr. GORDON: If the Examiner please, I want to correct a statement which I made a few minutes ago which I
187 was not warranted in making. Counsel asked me if I would stipulate that Sol Smith was not an officer of the corporation, and I stated that I would so stipulate. I believe that I am in error in that statement.

Exam. WAY: What office does he hold?

Mr. GORDON: As the minutes reveal, he was appointed and employed as executive secretary. Now, I think the By-Laws of the corporation authorize the employment or appointment of such other officers and employees as the directors may see fit to choose, and, as a matter of law, I think that their hiring of him as executive secretary would constitute him as an officer of the corporation for that purpose.

Mr. AMES: Mr. Examiner, may I ask the witness one question on a matter that Mr. Taylor brought up?

Exam. WAY: Yes.

Re-cross Examination.

Q. (By Mr. AMES) On this matter of countersigning checks, Mr. Ernst, as I understand it, the money you pay into Mr. Olson when you receive freight, and the money that other members pay in to him is put into what is called a freight fund, out of which Mr. Olson pays the underlying carriers, be they railroad, truck, or water carriers, and the terminal handlings, checking, and later making of readjustments with your other members.

188 Am I correct in that understanding?

A. I can't answer that. I don't know anything about the forwarding business.

Q. The money you pay to Mr. Olson in the first instance is put into what is known in your organization as a freight fund, is it not?

A. I believe so. I wouldn't be sure what the functions are.

Q. Maybe I am calling it wrong, but the money you pay Mr. Olson in the first instance goes into an account in common with all other members', does it not?

A. I don't know.

Q. Did you ever countersign a check with Mr. Olson? I have got to go into details with you. Did you ever countersign a check with Mr. Olson to pay a railroad?

A. To the best of my knowledge, no.

Q. Did you ever countersign a check with Mr. Olson to pay the Terminal Transport Company, Incorporated at Chicago?

A. I must be dumber than some people think I am. I don't remember. I will be absolutely frank.

Q. Did you ever countersign a check with Mr. Olson to pay Terminal Transport? I don't care how dumb you are. Answer the question.

A. I don't know, or don't remember, either one, as far as I know.

Q. Did you ever countersign a check with Mr.
189 Olson to pay a truck carrier back in Chicago for hauling shipments to Chicago?

A. I don't remember.

Q. Did you ever countersign a check with Mr. Olson to pay for the distribution of the freight after it arrives at Los Angeles?

A. I don't remember that one.

Q. But you do remember that you countersigned some checks out of this so-called membership fund, don't you?

A. Yes.

Q. You remember that very well?

A. With Sol Smith.

Q. Well, Sol Smith or Olson, either one.

A. Well—

Q. Now, do you remember any check whatsoever you ever countersigned with either Sol Smith or Olson to cover any details of this freight forwarding operation?

A. Well, that takes in a lot of territory.

Q. Well, take it in. Do you remember any checks you ever countersigned with Sol Smith or Olson?

A. I don't remember. I can't—

Mr. Gordon: Just a moment. I don't think the witness has finished answering that question.

Exam. Way: All right. Go ahead and answer it.

Mr. Ames: Let the question be read, please.

190 (Question read.)

The Witness: With Sol Smith or Olson?

Mr. Gordon: That is what the question was.

The Witness: Well, yes.

Q. (By Mr. Ames) All right. What did that check cover that you countersigned? You have got a good memory there. You ought to remember exactly what it covers?

A. Well, one covered the expenses of going—I don't know which particular points—Portland, Oregon.

Q. That was Mr. Olson's traveling expenses?

A. Yes.

Q. Well, then, I will repeat the question: Did you ever sign or countersign a check with Olson or Smith covering

payment for any details of the freight forwarding operation as such?

A. (No response.)

Mr. GORDON: I submit that the question is not clearly intelligible as to what the freight forwarding operation, as such, includes. If counsel means by that for transportation service or insurance or something of that kind, that is one thing, but—

Mr. AMES: Well, I think the witness knows what I mean, but if he wants my question in detail, I will go back to the beginning.

Q. (By Mr. AMES) By "freight forwarding operation" I mean the assembling of freight, the forwarding by
191 a rail carrier, the distribution at destination. Do you understand me?

A. Yes.

Q. Now, did you ever countersign with Olson or Smith, either, a check to cover payment for any of those services?

A. To the best of my knowledge, no.

Mr. AMES: That is all.

Exam. WAY: Anything further.

(No response.)

Exam. WAY: Witness is excused.

(Witness excused.)

Exam. WAY: Call your next witness.

Mr. TAYLOR: Mr. Sol Smith.

SOL SMITH was recalled, and having been previously sworn, testified further as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. Sol Smith, professional executive secretary with offices located at 2714 South Hill Street, Los Angeles?

A. I am, sir.

Q. You are executive secretary of the Pacific Wholesalers' Association?

A. Yes, sir.

Q. And you have been since what time?

A. Oh, since its inception.

192 Q. In 1934?

A. Yes, sir.

Q. You are also executive secretary for the following nine associations: Automotive Industrial Council, Incorporated; California Automotive Wholesalers' Association; Cooperative Distributors, Incorporated; Independent Tire Recappers of Southern California; Los Angeles Automotive Warehouse Association; Los Angeles Paint, Veneer

and Lacquer Association; Lumber Council of Southern California, Incorporated; West Coast Electronic Manufacturing Association; and, Sol Smith, Assignee for Benefit of Creditors?

Are you the executive secretary for those associations named?

A. I am, for all of them, except West Coast Electronic Manufacturers' Association, which ceased as of the first of February.

Q. What is the principal place of business of the Pacific Coast Wholesalers' Association?

A. Well, its official offices are 2714 South Hill Street.

Q. And that is the location of your own personal office?

A. Yes, sir.

Q. And how is the Pacific Coast Wholesalers' Association, as an Association, carried in the Los Angeles Telephone Directory? Does it show your address?

A. I don't think it is in the directory. If it is, I
193 don't know it.

Q. It is not listed at least with your address?

A. No, sir.

Q. By whom were you first employed as an executive secretary?

A. Well—

Exam. WAY: You mean with the P. C. W. A.?

Mr. TAYLOR: Yes, for the P. C. W. A.

The WITNESS: I can't fix the date on that.

Q. (By Mr. TAYLOR) You were one of the original organizers, were you not, Mr. Smith?

A. I think Mr. Colyear and I were the original organizers.

Q. And Mr. G. A. Olson in association with you?

A. Not at the inception of it, to my knowledge.

Q. Did you have any meetings prior to October, 1934, in connection with the formation of the Association?

A. I can't say as to that. May I have my minutes? Have you my minutes, Mr. Gordon, please?

(Document handed to the witness.)

Mr. TAYLOR: Will you repeat the question again, please?

(Question read.)

The WITNESS: No, sir.

Q. (By Mr. TAYLOR) Will you please refer to the minutes of October 10, 1934, which are purported to be the minutes of the first organization meeting, and upon which review the first paragraph contained therein and
194 advise whether Mr. Olson did not associate himself

with you just prior to that meeting for the purpose of conducting a survey to secure necessary tonnage to institute the association?

A. I think he assisted in the latter end of the survey which we made.

Q. You called him in for that purpose?

A. I suppose—I am trying to answer your question clearly—I have an awful bad cold—may I make a preliminary Statement, Mr. Taylor, in that matter?

Q. Does it have to do with the question?

A. It has to do with my first contact with Mr. Olson, and the letter in which it was made.

Q. Yes, sir, we would like to have any and all information you can give us in connection with your first—

A. This is all eleven years ago, but I recall with some vividness a telephone call from Mr. Colyear to come to his office. I was at that time the secretary of the Jobber Association, of which Mr. Colyear was a member, and who paid me a fee, as I recall, at that time, of approximately $75.00 a month, as did many other houses in the area. As he—

Exam. Way: What was that fee for? In payment for your services with the Jobbers Association?

195 A. Yes, sir. I operated a credit chapter and did other matters in connection with the Jobbers' group, automotive, wholesaling jobbers. Mr. Colyear called me on the telephone and asked me to come to his office, which I did. He showed me a letter which he had received from I can't exactly call the name at the bottom of the letter, but it is my memory, over the years going back, the letter was dated at an early date in February, 1934, and he handed me the letter, and I read the letter. In substance, the letter stated to him that effective, I think it was the 15th of February of that same month, his rate of Chicago store-door would go from $1.95 to $2.35 per hundredweight, effective of the 15th.

And being the largest jobber in the United States, which means I suppose in the world, and being affected with an enormous amount of tonnage he was clearly incensed because he would have to absorb that additional 40 cents per hundredweight and he asked me if I thought, with his assistance, I could organize a freight forwarding association. I told him that I thought I could. So from that conversation, we started to work, Mr. Colyear and I, he contacting over the telephone in some instances, by seeing some of the jobbers whom I did not have contacted, and from that idea

was born the Pacific Coast Wholesalers' Association.

Mr. Colyear at some time after he had asked me to look into the situation told me that he had the firm of
196 Loertz & Olson, who was doing his traffic work for him, in such matters having to do with rates, and so forth, that they would be available.

A. Now, I don't remember when I first met Mr. Olson. I don't remember any specific calls which he made with me on accounts, although he may have done that.

Now, I have tried in that statement to answer your question as to how and when I met Mr. Olson, and it was prior to this meeting shown in this copy of the minutes.

Q. Thank you, Mr. Smith. What were your first duties as Executive Secretary of the old Association?

A. They were to conduct such correspondence as might be necessary and carry on the work of an Association Secretary.

Q. And your first salary was paid by the other Association to which you referred—what was the name of that Association, please?

A. It is a jobber association. You read it amongst those. It is a very old association, and it is one of those groups.

Q. When did you first begin drawing a salary from the Pacific Coast Wholesalers' Association?

A. I can't fix the date of it.

Q. Can you fix the approximate date as to the year?

A. I don't think any letters came in to me as a result of that particular operation—let me just have a minute here to refresh my memory, if I can, on these minutes,
197 Mr. Taylor. It will probably take considerable time for me to study this matter and try to arrive at that date, but it was probably some time following this October 10, 1934 meeting. It was some time in 1935.

Q. There are just a few meetings there. I think there are just two meetings there in 1935. Will you refer to these and see.

A. I am trying to fix it with these meetings when Olson was voted—when it was voted to pay 10 cents per hundredweight, because it was the understanding of the Directors at that time that any compensation which was—

Q. Will you refer to the meeting of July 17, 1935. I believe it shows there. Yes, it does, on page—

A. What is the meeting again?

Q. Let us see. Just a minute.

A. I think the bottom here, Mr. Taylor, of the minutes of the first page of these minutes of March 27, 1935, the matter of the compensation for G. A. Olson was discussed,

(Reading) "Matter of compensation for G. A. Olson was discussed and in the participation in the discussion Mr. Olson left this matter open; same to be given consideration when the success of his trip is determined."

It was following that time.

Q. Yes, and what was that salary that was first paid you?

A. I think the first salary that I got was $30.00 a month.

198 Exam. WAY: Let me ask you: There is a reference made in the minutes as to the amount of salary, depending on the success of Mr. Olson's campaign, or whatever it was. What was he doing? What was the—

A. Mr. Examiner, when this thing first came into—idea came into being we did not know what our rates, what our costs were going to be. We had to naturally establish assembling points in Chicago. We also—of course, if we were going to enjoy the largest measure of profit we had to have contracts made with trucking companies hauling into Chicago, and there were no contracts, and they had to be made, and Mr. Olson went East to establish these assembling points, or, rather, depots, and make contracts for the trucking haul into Chicago.

Exam. WAY: I see. All right.

Q. (By Mr. TAYLOR) And when was your salary next increased, Mr. Smith?

A. Oh, I can't place the date, Mr. Taylor. It went along for quite a while at that, and then it went to $50.00, and then went up, depending upon the volume of business, until the next figure was $200.00.

Q. It has been for the past few years $200.00, has it not?

A. No, it hasn't. It has been about not more than two years.

Q. And who has paid you the $200.00?

A. It has been paid from—with the understanding of the Directors which may or may not be reflected in the

199 minutes, that it was to come from the amount of money which was allowed to Olson—not as—never was I in the employ of Olson. Never did I look upon any moneys which came to be from the activities of the Association as being given to me by Olson, but they were encompassed within the allowance which was made to Olson per hundred weight of freight.

Q. But Mr. Olson did, in fact, pay you and has paid you each month $200.00, has he not?

A. Well, if you have to have a definition of the—of this question—

Q. All right. How are you paid? How are you paid this salary, by what methods?

A. Mr. Olson pays me by the wishes of the Directors $200.00 a month, and now since the corporation has been formed it's not drawn out of any funds or amounts which Olson has, but it is drawn out of the freight fund.

Q. You still haven't answered my question, Mr. Smith.

A. I want to if I can, if I can understand it.

Q. Do you receive a check each month for $200.00?

A. Yes, sir.

Q. Who signs the check?

A. Mr. Olson, as general manager of the Pacific Coast Wholesalers' Association out of the freight funds.

Q. And the checks have printed thereon "Pacific Coast Wholesalers' Association"?

200 A. Yes, sir.

Q. And who else signs the checks besides Mr. Olson?

A. No one. If they do, I don't know—I don't notice the checks, because it is one of the many hundreds that comes in the office. I don't notice who signs it. Really, I can't testify to that.

Q. Have you been thus paid since the date of the incorporation?

A. Yes, sir.

Q. And prior to the date of the incorporation, who paid you?

A. I was an employee of the corporation. My money came from Olson.

Q. Prior to the incorporation?

A. Yes, sir.

Q. Well, you said you were an employee of the corporation. What do you mean now?

A. I mean of the Association.

Q. But you were paid in like manner by a check written by Mr. Olson each month.

A. Yes, sir.

Q. Have your duties, in general, increased since the Association was incorporated?

A. No, not materially. I wonder if I could have a drink of water? Go ahead with your questioning. I am not suffering that badly, but I am sort of dry in the mouth.

Q. What accounts were handled by you, Mr.
201 Smith, prior to September, 1943?

A. I think—I had two funds. I had one fund in Sol Smith's account. For your information, my office is operated, and I have an account under the name of Sol Smith, Secretary, in which I deposited several deposits of funds, and on my books. They are set up so that each fund is run separately, and when the monthly statement comes out it shows the amount in that fund making up the Sol Smith total bank balance.

Q. You are speaking of P. C. W. A. moneys?

A. There was one fund in there—yes, sir—the original fund was there. Then there is another account—

Q. Now, pardon me. What was the source of that fund of which you speak?

A. Well, the original moneys which came into the organization were deposited in that fund.

Exam. Way: From membership fees?

The Witness: From all sources, yes, sir.

Q. (By Mr. Taylor) What other sources were there, Mr. Smith?

A. Oh, I think looking at it, without looking directly at the records, I believe there were occasions—for a time there was occasional stray shipments which would go in of, maybe, oh, I don't know, $7.50 or $5.00 and something, and they had no place for it, and they dumped it in that fund, but the checks were small and I don't think the total amount would run over $200.00 in the total.

202 Q. These membership fees of which you speak, were they sent to you directly from new members?

A. Yes, sir, they came to my office as the headquarters of the Association.

Q. Directly from the new members.

A. Yes, sir.

Q. And what disposition was made of the funds in that account?

A. Well, they were used for various purposes. They were used to pay, for instance, capital stock tax returns, Collector of Internal Revenue on income tax, if any, and any other incidental matters. They were also used to defray the expenses of trips made by Olson in behalf of the Association.

Q. The fund was used as an expense acount fund for Mr. Olson?

A. Well, I don't want to question, or to answer to indicate that the expense account was set up particularly for

Mr. Olson, because it was participated in by all of the operations of the organization, including his traveling expenses.

Q. I will ask you what was the principal purpose of disbursement with respect to this fund?

A. (No response.)

Q. For whose account were most of the checks drawn?

A. I will have to look at my records, sir.

Q. Will you do so?

A. Yes. (Witness examines records.) To which fund do you refer?

203 Q. To the first fund, the so-called Sol Smith fund, as you identified it.

A. There are items in here for expenses for Olson on a Chicago trip, printing, telegrams, telephone and telegrams, stenographic service, printing, concurrencies, printing, tariffs, telegrams, legal services, income tax, telephone calls, capital stock tax returns, and so forth.

Q. Yes, sir. Now, what period of time, please, sir, did this so-called Sol Smith account exist?

A. Well, our first record of deposit was on July 31, 1934.

Q. Yes, sir. And when was your last deposit in that fund?

A. December 15, 1943.

Q. And what was the total amount deposited during that period?

A. $6,519.58.

Q. And of that fund how much was the total thereof retained to the payment of Mr. G. A. Olson?

A. Are you an accountant, Mr. Taylor? Will you put these down and I will read them, and take your total on that.

Exam. WAY: Off the record.

(Reading of figures and computation of them off the record.)

(The question was read.)

A. $3,646.76, if these are added correctly.

Q. And that amount you just stated reflects how many individual payments to Mr. Olson?

A. Fourteen. I shall accept Mr. Anderson's figure here. We have 15. That was that $30.00 that I didn't see.

204 Q. And those items represented expenses incurred by Mr. Olson on his trips out of Los Angeles on behalf of the Association's business?

A. Yes, sir.

Q. And did Mr. Olson on each occasion of a payment to him for traveling expense submit to you as Executive Secretary an itemization of his expense on that trip?

A. He did not.

Q. Did he submit to the Board of Directors an itemization of his expense accounts?

A. Not always.

Q. Well, did he ever do so?

A. Yes, sir.

Q. At what times and in connection with what payments to him?

A. Well, I remember the one on the A & D case.

Exam. WAY: What was the A & D case?

The WITNESS: Assembly and Distribution case.

Q. (By Mr. TAYLOR) Was that amount paid out of this particular fund of the Sol Smith fund?

A. Well, that probably came out of the other fund.

Exam. WAY: What was the other fund?

The WITNESS: The second fund carried in the Security-First National Trust and Savings Bank under the name of the Pacific Coast Wholesalers' Association.

Q. (By Mr. TAYLOR) Yes. Now, before we get on this second fund, please, why was this fund of which you
205 are just now speaking?

A. Which one, Mr. Taylor?

Q. The so-called Sol Smith fund.

A. Yes.

Q. The fund which we have been discussing, why, if the fund was made up of payments, membership payments to the Association, why were those funds carried in your personal account? Why were they not carried in the account of the Pacific Coast Wholesalers' Association?

A. Well, as I tried to explain earlier, in the experience when Mr. Colyear and I organized the Association, we received moneys from certain men who became members to establish an amount, which we thought would be somewhere—let me make that statement this way: When Mr. Colyear talked that morning, he asked me how much money I thought it would take to make a survey. I had no figures in mind, but he said, "I'll put in $100.00 and I will get the other people to put in some money." That was the way the thing was started. Now, there was not any Pacific Coast Wholesalers' Association at that time. And there apparently was no Pacific Coast Wholesalers' Association until at least after the May 10th meeting, or the meeting which is reflected in the first minutes. There was no Association.

So, inasmuch as we had no—the idea hadn't taken concrete form, and instead of putting the money in a bank account and properly naming the account, it was carried in the Sol Smith's funds, along with a few thousand dol-
206 lars less.

Q. Did the Board of Directors approve of that handling by recorded minutes?

A. I don't recall.

Q. Well, Mr. Smith, you stated the purpose and the cause of the so-called Sol Smith fund and gave your reasons there why the fund was set up in the first instance, that is, before the tonnage of the Association began to move, which would provide some revenue in the office of Mr. Olson. Now your July 17, 1935, minutes indicate that beginning at that time perhaps the Association did commence to function through Mr. Olson's office and that Mr. Olson then began to deduct 10 cents per hundredweight on second bracket freight, and 5 cents per hundredweight on first bracket freight.

Now, what was the reason for the continuance of this account of which you spoke, the Sol Smith's account after the Association was functioning as a profitable institution?

A. I can't give the reason why it was done, except that it was just done.

Q. And the account did continue this way as the Sol Smith's account up until the time of the incorporation?

A. Yes.

Q. And then did it then cease?

A. Yes, sir, the Pacific Coast Wholesalers' fund in Sol Smith's books was closed on the date of the transfer
207 of the residue of money, which was made on August 31, 1944.

Q. And as of that time what was the amount of the funds then on hand in that account?

A. The amount of $729.62 was deposited in the corporation bank account on August 11, 1944.

Q. And is that a bank account maintained by your own office as Executive Secretary?

A. I make the deposits in there, yes, sir. And I am one party authorized in a dual signature to withdraw moneys.

Q. And is that $700.00 account still on deposit in the bank you just mentioned?

A. Well, it is mixed in with other funds.

Q. What other funds?

A. Of the P. C. W. A. Corporation.

Q. Membership funds?

A. All funds that have gone into that fund since its opening?

Q. And what other funds are deposited to the credit of that account?

A. Well, originally, of course, that account was used as a, oh, I think it was used in the early inception as a clearing account, because of the early manner in which we had so handled our freight bills, et cetera, but our distributors caused the surplus to be placed in that account.

Q. Now, Mr. Smith, are you speaking of the continuation of the old so-called Sol Smith account, following it down through the corporation to the present time?

208 A. (No response.)

Q. Let us follow that account down to the present time and see what it consists of.

A. Well, now, sir!

Exam. WAY: The last we heard of that account was it had $729.62 in that account, and on August 11, 1944, it was deposited in the general account of the P. C. W. A. account?

The WITNESS: Yes, sir.

Exam. WAY: And then that account contained all of the monies of that Association?

The WITNESS: Yes, sir.

Exam. WAY: In other words, that $729.00 lost its identity and became mingled with the other money?

The WITNESS: Yes, sir.

Exam. WAY: Now, we have another account. What is the other account?

The WITNESS: That is the one account.

Q. (By Mr. TAYLOR) Let us have a continuation of the same fund. There was $700.00 in that account as of 1944 when it was transferred from the Sol Smith account to the general account in the corporation?

A. Yes, sir.

Q. What other deposits have been added to that fund since that time?

A. None.

209 Q. Is that fund still existent as of $700.00 at this time?

A. No, sir.

Q. What has the disposition of that fund been?

A. That amount of $729.62, and some drawn by Sol Smith made payable to the Pacific Coast Wholesalers' Association was deposited in the Pacific Coast Wholesalers' Association, Incorporated, bank account, on August 11, 1944.

Q. Yes. Was the P. C. W. A. bank account in existence prior to that date?

A. You are—now you are over to the second account.

Q. No. You have just now spoken of the P. C. W. A. bank account. You say seven hundred and some odd dollars was deposited in that account, and I want to find out, please, sir, what that account is. Now, if that is the account, the second account, a continuation of the second account, of which you were about to speak a few minutes ago, then let us go to that second account?

A. Yes, sir, that is what it is.

Q. Thank you sir. Now, the second account maintained by you as Executive Secretary is known as the Pacific Coast Wholesalers' Association account?

A. Yes, sir.

Q. And when was that first created?

A. First deposit was on June 5, 1938.

Q. And what funds made up the deposits of that account?

210 A. They were for—from 1936, in June, down to January 2nd, 1937, according to the records which I have been able to uncover, remembering that some records have gone—I mean that my help has changed, and I am not an accountant, and I don't keep my finger on the books. According to this sheet, they were either from the L. A. Warehouse, or Farnsworth and Ruggles in San Francisco, our distributors there.

Q. What was the purpose of those checks to you by those distributors? What account did that cover?

A. Well, they covered the collections which they as distributors made from our members' list there on charges.

Q. What did the charges include?

A. Well, their charges were at that time—I am testifying from memory here.

Q. Yes, sir.

A. That is the best I can. They were—they performed the function of unloading and delivering the freight at those two terminals, for which they charged a certain fee, and, as I remember it, they at that time issued the freight bills on statements which were supplied to them by Olson.

Q. And for that service, which they performed for the P. C. W. A., they paid you?

A. Me?

Q. Well, you, the Association?

A. No. The difference between the figures which

211 Olson furnished them on which to collect on the bills —on the statements—I don't want to get confused on it, because basically I am not a traffic man. You understand that. But when they had collected the freight bills and paid the freight on the cars, there was an excess of an amount of money which was saving that the consignee had experienced, and these checks represent the total savings.

Q. The consignees in connection with that freight, I assume, were members of the Association?

A. I recall in all the history of the thing that we had but one account to which we made shipments.

Q. Will you please explain this fund a little more?

A. I want to do it. I want to get everything the book has got here, if I can give it to you.

Q. You have been under the impression and you people have continued here that you are a non-profit shipping Association existing for the benefit of the members. Now, under what circumstances would a savings to a member be collected by—

A. Well, assuming that the—

Q. Let me finish. Be collected by any of your representatives or contractual representatives, such as you have mentioned, and that savings be credited to the Association as a whole, and taken away from the individual member who supplied the tonnage?

A. Oh, that would be—I don't want to use a word
212 —of course, when the money went in there it was earmarked and I saw how much of it belonged to each consignee. Olson kept those records for the Association, and I refer now to payments. On December 31, 1936, in that same year, in order to get it out of the funds, the following payments: Borg Warner, $490.00—

Q. Well, now, first, Mr. Smith, please, sir, let us have all the credits, the total of the credits that inured to that fund during the full period of time that that account was in existence?

A. It still is in existence.

Q. What is the total amount of the funds that have been deposited to that account from its first creation?

A. $20,145.55.

Q. And what have been the total disbursements from that fund?

A. $18,497.86.

Q. And have those disbursements been paid to the members in consequence of the pro rata of the tonnage which

occurred as the result of the accounts as they were deposited?

A. The type of deposit to which I referred as being the receipts from the distributors was paid back entirely to the consignees, whose overcharges had contributed to that fund exactly in the amount of their contributions, and I believe I am safe in testifying that no slightest trace of it was retained as an asset of the Association.

213 Mr. GORDON: May I inquire there just for clarity: When you refer to money being paid back to the consignees, are you referring to members of the Association?

The WITNESS: Yes.

Mr. GORDON: Who happened to be the consignees of the freight?

The WITNESS: Yes, sir.

Exam. WAY: You represented that amount that you called savings?

The WITNESS: Yes, sir.

Exam. WAY: It has been referred to here all day as savings?

The WITNESS: Yes, sir, it was handled that way at that time, but the fund was only used for a short time. It will be changed here, it will develop a little later.

Q. (By Mr. TAYLOR) Are all the funds collected by yourself as Executive Secretary and by Mr. Olson as general manager now deposited in that fund?

A. No, sir.

Q. What other funds do you maintain, Mr. Smith?

A. The Association maintains a freight fund.

Q. And is that fund maintained by your office?

A. No, sir.

Q. Is it maintained by the office of Mr. G. A. Olson?

A. Yes, sir, at the instruction of the directors.

214 Q. And is that fund referred to in the minutes as the revolving fund?

A. Yes, sir, only it hasn't started to revolve. It is part of the—it isn't—now, I want to get that question straight, because I heard Mr. Ernst testify this afternoon, and I don't want to become a "pro tem".

Q. I am speaking of the five cents per 100 pounds revolving fund which was provided for at the time of the incorporation?

A. That is carried in the freight fund now.

Q. What else is carried in the freight fund?

A. All transactions that have to do with receipts of freight payments from members, and payment of all bills

that have to do with the operation of the freight, of the physical operation of the freight end of it.

Q. Is that the same fund in which Mr. Olson probably deposited the 15 and one-quarter cents per 100 pounds which is retained by him?

A. I don't know. I presume—I don't know. I can't answer that.

Q. Well, then, you suggested a moment ago that there were other funds deposited to this freight fund. What other funds did you have in mind?

A. Well, other collections are deposited. I am not—I shall attempt to answer your question—I shall attempt to answer it, of course, and I shall attempt to answer it.

215 What Mr. Olson does with the 15¼ cents, which is allowed to the general manager of the Association, where he deposits that after he has made all due accounting, and determining that on so many thousands or million pounds of freight that amount is due him, I don't know.

Q. Thank you, Mr. Smith. That will be all.

Exam. WAY: We will take a recess until nine o'clock tomorrow morning.

(At 9:35 o'clock p. m., February 2, 1945, the hearing was adjourned until 9:00 o'clock a. m., February 3, 1945.)

216 Before the Interstate Commerce Commission

Ex Parte No. 160.

In the Matter of:

PACIFIC COAST WHOLESALERS' ASSOCIATION,
INVESTIGATION OF STATUS.

Room 229, Federal Building,
Los Angeles, California.
February 3, 1945. 9:00 a. m.

Before: L. WAY, Examiner.

Met pursuant to adjournment.

APPEARANCES:

As heretofore noted.

217 PROCEEDINGS

Exam. WAY: Let us come to order, please.

SOL SMITH recalled as a witness, having been previously duly sworn, testified further as follows:

Exam. WAY: Were you through with Mr. Smith, Mr. Taylor?

Mr. TAYLOR: Yes, sir, on direct examination.

Exam. WAY: Cross examine.

Cross Examination.

Q. (By Mr. Ames) Mr. Smith, among the expenditures you mentioned in connection with this so-called Sol Smith fund, were expenditures incurred in the manner of concurrencies in tariff? Am I correct in that?

A. Yes, sir.

Q. How did you happen to make expenditures of that nature if you are not a freight forwarder?

A. I shall endeavor to answer that with a very limited knowledge. I am not a traffic man. At one time, I believe—my answer—my understanding is that at one time under certain real or proposed legislation covering transport carriers, there was—may happen to be removed the ability of any Association, such as ours, to participate in any through rates, and, therefore, it was deemed advisable to file a tariff.

Q. You understand, do you not, that the law sets up no obligation for the publication of tariffs against any-
218 body excepting forwarders?

Mr. Gordon: Just a moment. Just a minute, Mr. Smith. I don't propose to interrupt your examination, Mr. Ames, except to make this observation. The law does require that tariffs be set up by others than forwarders. I understood the witness' previous answer to be directed not to the operative rights of the forwarders so much as the operative rights of the motor carriers and the motor carriers are required to set up tariffs.

Mr. Ames: I know that Part IV requires setting up a tariff by forwarders.

The Witness: I am not a specialist. I didn't know that.

Q. (By Mr. Ames) Is it true that after the passage of the Act of 1942, you not only published tariffs, but urged motor carriers to join with you?

A. I can't answer that.

Q. You spoke of Mr. Colyear as having gotten this idea of the Association because of the fact that he was subjected to a 40-cent increase in his charges. Is that correct?

A. Yes, sir.

Q. And as I understood your testimony, that he was compelled to absorb that 40 cents and couldn't pass it on?

A. That is right.

Q. Before Mr. Colyear's death, and while he was a member, did he effect savings in transportation due to this Association?

219 A. Yes, sir.

Q. You know whether he passed those savings on to his sub-dealers or took them himself?

A. I don't know.

Q. You don't know how he billed his sub-dealers?

A. No.

Q. I am not sure that the record is clear in reference to the freight fund. I wish you would describe exactly what monies go into that fund?

A. It is my understanding that all monies collected from freight bills go into that fund.

Q. Are there any other monies that go into that fund?

A. No, sir.

Q. Is it separately held, marked as freight fund?

A. Yes, sir.

Q. And is it separately deposited as a freight fund?

A. Yes, sir.

Mr. GORDON: Freight account, I think it is called.

Mr. AMES: Those two are synonymous?

Mr. GORDON: Yes. When he speaks of "freight fund" he means "freight account".

Q. (By Mr. AMES) What is paid out of that freight account?

A. Well, all transportation charges. That is, all railroad fees.

Q. Does that include trucks, also, freight transport?

220 A. Yes, anything that is paid to a carrier.

Q. Yes.

A. Yes, sir.

Exam. WAY: Also a warehouse.

The WITNESS: Yes, sir.

Q. (By Mr. AMES) In other words, the underlying carriers are paid out of that fund, whether they be railroad or truck?

A. Yes, sir.

Q. Now, is the Transport Terminal Company paid out of that fund?

A. I don't know.

Q. Well, do you know exactly what is paid out of it besides the underlying carriers?

A. No, sir.

Q. Is that kept in a separate account?

A. Yes, sir.

Q. Do you know who draws checks against it?

A. G. A. Olson, and I believe G. H. Matthews is a second party.

Q. And Mr. Matthews is associated with Mr. Olson?

A. Yes, sir. Mr. Olson is under $50,000.00 bond on that fund.

Q. Do you assist Mr. Olson in any way in sending freight bills to members?

A. No, sir.

Q. Do you know anything about this matter of federal tax?

221 A. No, sir.

Q. I understood you to say yesterday that in 1936 you remitted $409.00 to the Borg Warner Company as a freight saving. Will you check and see if that is correct and give me the date of that remittance?

A. Borg Warner? December 31.

Q. What year?

A. 1936.

Q. I show you Exhibit 3, Mr. Smith, and ask you to state for the record from that exhibit the date upon which Borg Warner became a member of your Association?

A. January, 1937.

Q. So that when you made that remittance to the Borg Warner Company, they were not a member? Is that correct?

A. No, sir, that is not correct.

Q. Which is correct?

A. As my memory serves me, the Borg Warner Company at the outset there was a delay in getting in their membership fee, and this amount was held from their savings. That is $200.00. There was a $200.00 fee which was taken from them, but that became—that was the date on which they were noted as a member. They were one of the original shippers.

Q. January, 1937 was the date they became a member?

A. No, sir.

Q. Then Exhibit 3 is wrong?

222 A. They were a participating member at all times. The matter of not having collected their $200.00 was a delayed item.

Q. Then it is your testimony that Exhibit 3 is wrong?

A. No, sir.

Q. Well, now, if the remittance was made in 1936 and they became a member in 1937, one or the other is wrong?

A. I wouldn't necessarily agree with that by reason of the fact that a membership in the organization doesn't imply that the membership carries with it at the time the membership fees.

Q. Well, what is the provision of your By-Laws? Can you point to anything to substantiate that? I was under the impression that a man did not become a member until he pays his membership fees.

A. That is not entirely correct. You are going back to the early days.

Q. This is 1937.

A. We didn't ship cars until 1935.

Q. Well, two years.

A. Yes.

Q. What provision of the By-Laws would justify your treating as a member someone who had not paid his membership fee?

A. There is no provision in there covering that matter.

Q. I don't know whether you can answer this or not, Mr. Smith, but does this Association have more than one break bulk point?

223 A. I can't answer that.

Q. You don't know that?

A. No, sir.

Mr. AMES: That is all I have, Mr. Examiner.

Q. (By Mr. Gordon) Mr. Smith, directing your attention again to Exhibit 3, these marginal notations of dates purporting to indicate when various members assumed membership were supplied, I believe, by information furnished by you? Is that right?

A. Yes, sir.

Q. How did you get that information of the dates?

A. I took it from the deposit of the amounts of money which represented their membership payments.

Q. Then the date that you noted for Borg Warner Service of January, 1937, was the date when their membership fee was paid up?

A. Yes, sir.

Q. And how did you say that fee was collected?

A. Well, to the best of my recollection, that amount was withheld from earnings, because there were some discrepancies back in the Borg Warner Company's account. There was no lack of intention to go in the Association, because I personally had talked to two of the men, the West Coast representative and also the man at Chicago here on a west-

ern trip, and it was definitely understood that they were members or would become members or were mem-
224 bers. I guess they could be counted upon as members in our early organization experience.

Q. Do you have any other records in your office indicating Borg Warner Company as members of the Association prior to January, 1935?

A. Well, all of the records of this particular Association were—I don't think they are over about four years' records of them in the office. That is, they are all here, but I don't think they run back of that date, excepting maybe in some instances, such as the minutes and so on and so on.

Q. But you stated, as I understand you, that from your own knowledge they were participating members prior to January, 1937, and accorded all of the advantages and privileges of a member prior to that time?

A. Yes, sir.

Q. And that their membership fee was not finally collected until January, 1937?

A. That is correct, sir.

Q. Calling your attention to Exhibit No. 2, the minutes of the old Association, Mr. Smith, how were the minutes of the meetings of the old Association taken and kept?

A. I think that I took all of the minutes. I take them in shorthand and then have them—dictate them for transcription.

Q. And you attend these meetings and make such notes for the minutes?

A. Yes, sir.

225 Q. What did you do with those notes after the meeting?

A. In many cases they wouldn't be dictated, mayhap, several days after they were taken. I never asked to see whether the minutes dictated were in the file.

Q. Do you have the same office assistants, secretarial office help now as you had then?

A. No, sir.

Q. Have there been many changes?

A. There have been three.

Q. Now, do you know whether or not all of the notes of proceedings of the meetings were actually written up in the form of minutes?

A. And transcribed?

Q. Yes.

A. No, I am rather inclined to think that there were some that were not.

Q. What makes you think that?

A. Well, there were certain things brought out in the testimony that would rather indicate that there might be missing minutes.

Exam. WAY: Well, you were secretary?

The WITNESS: Yes, sir, Executive Secretary.

Exam. WAY: Wasn't it your duty to see that these minutes were properly recorded?

The WITNESS: Yes, sir.

Exam. WAY: But you did not do it?

226 The WITNESS: I was remiss in my duty.

Q. (By Mr. GORDON) In such minutes as were written up, Mr. Smith, would you state whether or not all of the discussions and all of the statements made by various persons attending these meetings are included in these minutes?

A. No, sir, the minutes would have been very voluminous, because our meetings, if all the transcripts had been made of statements I took, would have filled volumes, because I took shorthand notes, and sometimes our meetings would be of quite considerable length, and many subjects were discussed.

Q. On the average, how much time was consumed in these meetings?

A. Just taking them at random, one meeting met at ten and adjourned at 12:15 at noon. One meeting met at ten and adjourned at 12:30, and another at eleven and 12:30.

Q. You have noted the time of convening and the time of adjournment, haven't you, in minutes that you did write?

A. Yes, sir.

Exam. WAY: Now, let me ask him another question: I want to know if there was any purpose back of your failure to record these minutes?

The WITNESS: No, sir. I will say there was never anything discussed—under oath and realizing I am saying this, I will say there was nothing discussed that was purposely left out of any of my notes, and neither are there any minutes which were written up which are not in here.

227 Q. (By Mr. Gordon) You have not looked at Exhibit 2?

A. No, I haven't. I think the ones the Examiner has are the ones they took to your office. I don't remember.

Q. The minutes of the meetings held subsequent to the time Mr. Taylor and Mr. Anderson made the informal investigation?

A. Yes, sir.

Q. Were not furnished to Mr. Taylor or Mr. Anderson?

A. They weren't available, sir. They were held subsequent to that time.

Q. Mr. Smith, at these meetings, will you state whether or not Mr. Olson at any time or times submitted verbal reports as to the financial operations of the Association?

A. Yes, I think that he was at all meetings—not at all meetings, but at meetings where the subject was discussed. One time here his bond was increased, a small figure to a much larger figure, I think, some $5,000.00, to on or around January 1, 1937—I would present the date—if that is the date, the general freight found was started—

Exam. WAY: Was increased to $5,000.00?

The WITNESS: No. From $5,000.00 to $50,000.00.

Q. (By Mr. Gordon) Were there discussions between the members and Mr. Olson and between the members themselves regarding the finances of the Association?

A. Oh, yes, that was necessary at frequent times, because there were loans made to the Association by its members.

228 Q. In the early days, you mean?

A. Yes, sir.

Q. I believe you stated that Mr. Colyear enlisted your assistance when you wanted to inaugurate this Association and get it organized?

A. He did, yes.

Q. Now, had you known Mr. Colyear for some time prior to that?

A. I knew him—I first met Mr. Colyear about 1924 or 1925.

Q. And do you know what business he was in?

A. Yes, sir, in the wholesaling of automotive replacement parts and accessories.

Q. Do you know whether or not he had been actively interested in any other form of business?

A. Yes, sir.

Q. What?

A. In the Colyear Van and Storage, and in the Colyear Furniture Company.

Q. And in that connection, do you know whether he had

had any experience in the shipment of household goods and freight in consolidated carloads?

A. He seemed to have quite a broad knowledge when he discussed the matter with me.

Q. With reference to whether or not Mr. Colyear realized any savings in his transportation costs to the activities of P. C. W. A., can you state whether or not that subject was ever discussed in the directors' meetings as to whether Colyear, and other members as well, realized savings?

229

A. It was.

Q. Did you have anything to do with the keeping of the funds of the freight account?

A. After it was inaugurated, you mean?

Q. The freight account?

A. No, sir.

Q. Who did that?

A. Mr. Olson.

Q. Did you keep any of the records pertaining to that account?

A. No, sir.

Q. That was all handled by Mr. Olson?

A. Yes, sir.

Exam. WAY: I want to be clear on one subject here. Do I understand you to say that you kept no accounts?

The WITNESS: No, sir,—of the freight account he is talking about.

Exam. WAY: But you did keep certain accounts, membership accounts?

The WITNESS: Yes, sir, I have them here.

Q. (By Mr. Gordon) You were responsible for accounting for the general fund?

A. Yes, sir.

Q. And that general fund, as you explained yesterday to Mr. Taylor, was kept partly in your own bank account and partly in a separate bank account under P. C. W. A. until recently when it was put all under the P. C. W. A. bank account?

230

A. Yes, sir.

Q. But all those funds came within the description of the general fund of the Association, did they not?

A. Yes, sir.

Q. Mr. Smith, I would like to ask you the same question that was asked Mr. Ernst yesterday: From your observa-

tion and knowledge of the manner in which this Association functioned from the time it was organized down until the present time, including the time that the corporation has been active, will you state whether or not the Association was managed by the Board of Directors or by somebody else?

A. By the Board of Directors.

Q. Would you state whether or not the corporation has been managed by a Board of Directors?

A. Yes, sir, it has.

Q. Has anything come before your observation to indicate to you that this activity, this Association, was formed in which Mr. Olson had a proprietary interest and that he ran it and managed it for his own benefit?

A. There has never been a time since the inception of the idea of the Pacific Coast Wholesalers' Association when either Gus Olson, as its general manager, or Sol Smith, as its Executive Secretary, could not be discharged and
231 their connection severed on one minute's notice by the governing body of the Association.

Q. Do you personally have any proprietary interest in the Association or its property or funds?

A. None whatever.

Q. Your only interest is that of being retained as a secretary to maintain its offices and look after its secretarial affairs?

A. Yes, sir.

Q. And in that connection have you assumed the job of assisting the secretary of the corporation, Mr. Ernst?

A. Well, I carried on the duties that would ordinarily be carried on by the secretary of the corporation.

Q. Well, as Executive Secretary you have a right—

A. (Interrupting) Done the work.

Q. You have done the work as secretary of the corporation?

A. Yes, sir.

Q. And you did the same for the Association?

A. Yes, sir.

Q. I believe, Mr. Smith, your minutes that were written up on the old Association do show at least one early joint meeting of the directors and members, do they not?

A. I would have to look that up, Mr. Gordon. I would qualify it by saying that looking at these—at least, at the minutes of October 10, 1934, there were men in attendance

at that meeting who never were members of the As-
232 sociation. So that was not an Association meeting.

Q. Well, the October 10, 1934 meeting, Mr. Smith, purports to record action taken creating the Association, does it not?

A. The heading says: "Minutes of a meeting held for the purpose of organizing a freight forwarding association."

The first meeting of the unincorporated Association apparently was held on March 27, 1935, because at that time a Board of Directors was elected.

Q. I will direct your attention to Exhibit 2, minutes of July 17, 1935. Will you look at the exhibit, Mr. Smith? That purports to be minutes of joint meeting of the Board of Directors and of the members of the Pacific Coast Wholesalers' Association?

A. Yes, sir, I would say that is.

Q. Now, do you recall whether or not at any other time they held a meeting of the members either separately or jointly with the directors up until the time of the incorporation?

A. I don't recall such a meeting.

Q. Do you recall that there was any meeting of the members of the membership in January of this year?

A. There was.

Q. And that meeting is reflected by the minutes of the corporation, is it?

A. Yes.

Q. I show you the original minute book of the
233 corporation, setting forth minutes of the annual meeting of the members held the second Wednesday in January, to-wit, January 10, 1945, at 10:00 o'clock a. m., in the office of the corporation at 2714 South Hill Street in the City of Los Angeles?

A. Yes, sir.

Q. That is the office of the corporation?

A. Yes, sir.

Q. And you attended that meeting, did you?

A. Yes, sir.

Q. And you have read those minutes?

A. Yes, sir.

Q. Do they correctly reflect what transpired at that meeting?

A. Yes, sir.

Q. Going back just a moment, Mr. Smith, to the early days of the old Association, I believe you stated that it became active and began to handle freight and to ship freight in 1935?

A. Yes, sir.

Q. And how long did Mr. Colyear continue actively with the affairs of the Association?

A. Oh, up to—he passed out in the Spring of 1943.

Q. I believe the date of his death was August 12, 1943.

A. Yes.

Q. Was he sick for some time prior to that time?

A. Yes, sir, for many months.

234 Q. He continued to take an active part?

A. Yes, sir, for many months.

Q. So, for some time in 1942 Mr. Colyear was active in the Association?

A. Mr. Colyear had three or four strokes prior to his last continued illness, and I can't place the time, sir, as to when he ceased—when he ceased to attend the meetings or discuss the matters of the Association with him personally.

Q. Well, it was at least until some time in 1942?

A. Yes, sir.

Q. Now, would you say that Mr. Colyear was or was not the dominating influence in the Association during the time that he was alive?

A. He was outstandingly so.

Q. Would you say that he did or did not actively supervise and direct the activities of both the Association and of Mr. Olson?

A. He did, sir.

Q. Do you know of any instance in which Mr. Olson took any action regarding the activities of the Association, such as the making of contracts or commitments of any kind, without the knowledge and approval of Mr. Colyear?

A. There were none made without that approval during his active participation.

Q. Do you know of any instance in which that ac-

235 tion was taken by Mr. Olson for or on behalf of the Association that was not either authorized prior to such actions taken or approved or ratified thereafter?

A. I know of none.

Mr. Gordon: I think that is all.

Mr. Ames: Mr. Examiner, that opens up the same situation we had yesterday, and I was given to understand that the minutes reflected the activities of the Board of Direc-

tors and now we have gone beyond, through Mr. Gordon's examination. May I inquire?

Exam. WAY: All right.

Q. (By Mr. AMES) It has been my impression, Mr. Smith, that under the organizational set-up you have here that this Association is supposed to be run by this Board of Directors. Am I correct in that?

A. We had a Constitution and By-Laws.

Q. In view of that, what do you mean by your testimony that Mr. Colyear was a dominating factor? Didn't he have to act through the Board of Directors?

A. Well, I can, perhaps, make the statement this way: That Mr. Colyear was very far-seeing and very brilliant mind and so respected by all competitors and also his enemies during his lifetime, and in his contact with the affairs of the Association Mr. Colyear was the dominating factor in it, and I know of no case where the Board of Di-
236 rectors when they have been consulted in matters have overriden Mr. Colyear's opinion.

Exam. WAY: Will you develop, Mr. Ames, Mr. Colyear's official capacity with the Association?

Q. (By Mr. AMES) Yes, what was the capacity of Mr. Colyear with the Association?

A. He was president.

Q. Did Mr. Colyear, under the Constitution and By-Laws have authority to issue instructions to Mr. Olson without consulting the Board of Directors or without getting their approval?

A. Under written word of the Constitution and By-Laws, it was an unincorporated Association, and could have been run without such elaborate Constitution and By-Laws as we had.

Q. Did you or Mr. Colyear take hold of the Association independent of the Constitution and By-Laws?

A. I think we could have.

Q. Did you ever?

A. I think I have directed things that was not passed on by the Board of Directors.

Q. What sort of things?

A. Well, I don't know that I can state specific cases where that has been done.

Q. Now, I will ask you one question, and if you will agree with me on it, we can save considerable time. Isn't it true, Mr. Smith, that so far as the operating details of this busi-

ness are concerned, the physical handling of this
237 freight, including its assembly and its transportation and its distribution, the Association has been handled by Mr. Olson without instructions from the Board of Directors?

A. No, sir, that isn't so.

Q. All right. Then I will have to go into details with you.

A. All right, sir.

Q. Let me first give you my impression of what takes place in the transportation of freight by a forwarder. We first have to have the movement into Chicago for consolidation. We next have to have the consolidation at Chicago. We next have to make arrangements for rail carriage from Chicago to Los Angeles. We next have to make arrangements for the distribution of the freight from Los Angeles. Then we have to make arrangements for the collection of the freight charges from the members. Then we have to arrange for the payment out of those freight charges to the underlying carriers or consolidators. Is that your impression of what takes place?

A. That is it, exactly correct.

Q. Can you point out to me any minutes of a meeting where the Board of Directors issued specific instructions to Mr. Olson as to any of those factors?

A. I don't think I can.

Q. Are you a member in the Association as a receiver of freight?

A. Am I a member?

Q. Yes.

238 A. No.

Q. Your sole connection is this Executive Secretary position?

A. That is correct.

Q. And you are paid a salary by Mr. Olson?

A. Not by Mr. Olson, but a salary by the Pacific Coast Wholesalers' Association.

Q. Out of what fund?

A. Out of the freight fund.

Q. Who signs the check?

A. Mr. Olson. He is so instructed to do that.

Q. But he signs the check for your salary?

A. I don't know. I never see the checks.

Mr. GORDON: We will stipulate that he signs the checks.

Mr. AMES: That is all, Mr. Smith.

Exam. WAY: Now, I would like to have on this record, I would like to have a statement showing the method of handling of the shipments under these assembly rates or the forwarding rates, a clean-cut statement of exactly what is done from the time the freight is solicited or received until the time it is delivered to the consignee.

Mr. AMES: Mr. Examiner, I had expected to do that through some witness like Mr. Matthews, perhaps, who is more familiar with these handlings.

Mr. TAYLOR: Mr. Examiner, I intend to develop that phrase of the hearing at a later time.

239 Exam. WAY: I don't want it overlooked, because I want it in this record.

Mr. GORDON: In that connection, it is our desire and purpose to put that on through a man most qualified to do it, and that was Mr. Olson. Apparently we have drifted into a rather confused state of presentation. That is all I have, Mr. Smith.

Re-direct Examination.

Q. (By Mr. TAYLOR) Mr. Smith, will you please refer again to the minutes of this very first meeting of record, October 10, 1934?

A. Yes, sir.

Q. I believe you just testified on answer to questions by Mr. Gordon that those minutes do not reflect all of the attendance presented there at that time?

A. No, sir, I did not so testify.

Q. Well, what did you say in connection with the matter of there being others considered for membership in this new Association which were not recorded? Wasn't that brought up?

A. No, sir, Mr. Taylor. I think the records will show that I said that that was not an Association meeting, that there were other people there who had been brought together to discuss the matter of forming this Association, who never did beome members of it and never did ship any freight.

Q. And their names don't appear on this record?

240 A. They are on the record—you are talking about October 10?

Q. I am talking about October 10, 1934.

A. I talked to Carter of Carter and Ketchem, who never became members nor ship any freight. And Mr. Yaton was there.

Q. It appears from your record that the only names referred to there are chiefly names of directors from time to

time, and it is noted that occasionally there are one or two or three other members present. That is the purpose of the question.

A. I see.

Q. Now, if you will please refer to the July 17, 1935 minutes, concerning which Mr. Gordon questioned you—those minutes are headed: "Minutes of a joint meeting of Board of Directors and Members". Did you advise Mr. Gordon in your answer that there were members present other than those shown on the minutes of this meeting?

A. May I have the question, please?

(Question read.)

A. No, sir.

Exam. WAY: In other words; all the people that were present at that time were members? Is that what you mean?

The WITNESS: Yes, sir. Just withhold that last reply. Now, you are talking about the meeting of nineteen thirty what?

Q. (By Mr. TAYLOR) July 17, 1935.

A. May I see those exhibits, please?

Mr. GORDON: Yes. I was going to get them for you.

241 (Handing documents to the witness.) I am showing you the minutes of July 17, 1935, of the joint meeting, as recorded in Exhibit 2.

The WITNESS: There was no one present at that meeting excepting members of the Association.

Q. (By Mr. TAYLOR) And are we to assume that as of that time there were only nine members in the Association?

A No, sir.

Q. Sir?

A. No, sir. I don't stipulate that all members were present.

Q. Well, you name six members as being present in those minutes, and you name three members as being absent. Does that refer only to Los Angeles members or also to members at that time only confined to Los Angeles members?

A. Well, if you are looking at the same minutes at which I am looking—

Q. July 17, 1935, at 3:00 p. m. Page 1, right at the top of page 1.

A. Oh, I see what you mean. Fey & Kraus, Gasket Shop, Motor Rim & Wheel?

Q. Being the only ones absent?

A. Being the only ones absent, yes, sir, and I think that constituted the membership at that time.

Q. You now think your entire membership at that time, July, 1935, consisted of the nine members there represented?

242 A. That is my belief, yes, sir. I would have to check that with the records to see that was so.

Q. Could you refer to your records that you have there and advise us?

A. This is prior to July—this is on July 17, 1935?

Mr. GORDON: In that connection, Mr. Taylor, may I call your attention again to that list of those present, and there appears present at that meeting on July 17, P. C. Lyon and T. A. Walsh, and I think the witness would state, would you not, Mr. Smith, that those men represent the same firm?

The WITNESS: Yes, sir.

Mr. GORDON: That is Chanslor & Lyon?

The WITNESS: Mr. Walsh was general manager located at San Francisco, and Mr. P. C. Lyon is the manager of their place in Los Angeles.

Mr. GORDON: So that meant the membership at that time was 8 instead of 9?

The WITNESS: That is correct.

Q. (By Mr. TAYLOR) And those individuals present represented chiefly automobile supply houses in Los Angeles?

A. Yes, sir.

Q. Now, with reference to January 19, 1945, will you please give us the names of the individuals and the members represented at that meeting?

Mr. GORDON: I may state that I am planning to and

243 will file as an exhibit copies of these meetings, which will supply the information you are asking for. May I submit this to counsel first.

(Handing documents to counsel.)

The WITNESS: The following is the list of members, firms, physically present by representatives at that meeting:—

Exam. WAY: I understood that he was going to put the minutes into the record.

Mr. TAYLOR: This won't take long.

The WITNESS: California Shipbuilding Corporation. Representative, George A. Horton, traffic manager. This title may not be correct, Perhaps I better leave the title off.

Chanslor & Lyon Company, P. C. Lyon, manager, Los Angeles Area Stores. Colyear Motor Sales, Elmer G. Jensen, vice-president in charge of finance. Ducommun Metals & Supply Company, William N. Pedder, traffic manager. Featherstone's, Incorporated, J. H. Ernst, president. Lam-

bert Company, Limited, Ira Lambert, president. Salt Lake City Hardware Company, H. H. Ellsworth, I believe traffic manager.

Q. (By Mr. TAYLOR) Now, that is a total of seven memberships, which were physically represented in the January, 1945 semi-annual meeting of members? Is that correct?

A. Excepting Mr. Ellsworth brought, I believe, at least—I would fix the figure at six or seven—proxies to the meeting from Salt Lake City.

244 Q. Yes. We will go into that pretty soon. Now, of these five memberships there represented, five constituted director memberships, did they not?

A. I am trying to think in my mind—I will answer that question by saying that—

Mr. Gordon: Off the record.

(Discussion off the record.)

(Question read.)

The WITNESS: Answering that question: Of the seven men present at that meeting, there were four of them who were directors.

Q. (By Mr. TAYLOR) Directors in the corporation as originally formed?

A. No. "As originally formed"?

Q. The corporation, yes.

Mr. GORDON: The corporation.

The WITNESS: They were as originally formed, yes, sir.

Q. (By Mr. TAYLOR) And those same four directors were reelected at this January, 1945 annual meeting?

A. No, sir.

Q. Which ones were reelected?

A. Mr. Lyon and Mr. Jensen and Mr. Ernst.

Q. Mr. Ira Lambert was not reelected?

A. No, sir.

Q. Who was elected in his stead?

245 A. There were two directors replaced.

Q. Who were they?

A. One was Mr. Lindroth, and the other was Mr. Lambert, and they were replaced by Mr. George J. Horton and Mr. William N. Pedder.

Q. Now, how many proxies were presented at that meeting?

A. 29.

Q. And in whose possession were those proxies at the opening of that meeting?

A. Pardon me. I was in possession of those which were

not brought to the meeting by the Salt Lake City representative.

Q. How did you come into possession of those proxies?

A. There was a mailing made, advising of the date and the purpose of the membership meeting, and the proxies were mailed at that time for those who wanted to vote by proxy rather than attend in person.

Q. Were those applications for proxies, excusing those members, mailed from your office?

A. I believe they were.

Q. And the proxies were returned by the members to your office?

A. Yes, sir.

Q. They didn't come to the secretary and treasurer, Mr. Ernst, as provided by the By-Laws of the corporation?

A. They did not come through Mr. Ernst's office.

246 Q. I understand that Mr. H. H. Ellsworth, who represented the Salt Lake Hardware, produced some proxies at the meeting?

A. Yes, sir.

Q. He brought them with him?

A. Yes, sir.

Q. What position does Mr. H. H. Ellsworth hold with the P. C. W. A. at Salt Lake City?

A. He is the traffic manager of the Salt Lake City Hardware Company, a member.

Q. Did not Mr. Ellsworth secure additional members at Salt Lake City for P. C. W. A.?

A. During what period?

Q. During any period of time.

A. Yes, sir, he sponsored memberships.

Q. Is Mr. Ellsworth on the payroll of Mr. Olson?

A. No, sir.

Q. Do you know that for a fact?

A. No, I can't answer that.

Q. You have never seen Mr. Olson's financial records, have you?

A. No, sir.

Q. Have you ever seen any of his operating records?

A. Yes.

Q. What operating records have you seen?

A. I have been in his place of business and looked over his methods, et cetera.

247 Q. Now, I believe you stated in relation to questions put by Mr. Gordon that you did not record all of the papers and reports supplied you by Mr. Olson in the conferences which you had from time to time?

Exam. WAY: Can you answer that?

The WITNESS: It was not a question, sir.

Q. (By Mr. TAYLOR) As a matter of fact, didn't you as related, Mr. Smith, submit your notes of the minutes to Mr. Olson before you attempted to record them?

A. No. There were times when I found it advisable so to do.

Q. But some of your minutes which appear in the record were minutes that were not prepared as of the time of the meeting, but were prepared later, following consultation between you and Mr. Olson?

A. I think there were very few occasions where—a very limited few where the minutes of the meetings were taken and roughed and sent to Mr. Olson to assist me in the matter of covering, mayhap, some point, but they were reviewed to see whether they were in line with his understanding at the meeting.

Q. And I believe you stated, sir, that Mr. Olson from time to time gave you notes and memoranda in connection with the operations of the business of P. C. W. A.?

A. Oh, no—if I answered that question—

Q. I am speaking relative to the minutes, now, the business meetings.

248 A. When we had our meetings, Mr. Olson had returned from a trip, or it was necessary to call a meeting of the directors—Mr. Olson is a rather breezy, bellicose, bustling type and known for quite extended verbage, and so he brought copies of reports and notes which were read at the meeting.

Q. I believe you stated a few minutes ago that Mr. Olson gave you notes and memoranda at times when he discussed with you and the Board financial and operating status of the P. C. W. A.?

A. He generally substantiated anything that he had by data.

Q. And those were Association records, were they not?

A. No, they were memoranda which were not handed to me in all cases.

Q. Well, sometimes they were left with you?

A. Sometimes they were left out. They might have been.

Q. And did you retain those in your file?

A. I can't tell you. If they are here, they are in the files, if they were not destroyed.

Q. As a general rule they were retained?

A. That is correct.

Q. Well, it seems to me that you did discuss, you and Mr. Olson, some very important points relative to the operations of the Association at those meetings, didn't you, as Executive Secretary, consider them important enough to record them?

A. Well, what items have you in mind that were not recorded?

Q. Well, for example, Mr. Olson, as I understand
249 it, executed a lot of contracts. He certainly had to do so at these points of distribution.

A. Yes, sir.

Q. There were certain considerations at the Board of Directors and the members, too, should have known about. For instance, the charges at the terminals and the trucking charges and the costs to them of—that is, all the costs, and I don't find in the minutes where the proposition with respect to those negotiations were ever submitted to the Board of Directors or the members, but in some instances the minutes show that actions were approved sometimes several months after Mr. Olson had executed such contracts. For instance, the minutes show that a contract was executed by Mr. Olson in May, 1942, with the Transport Terminal Company and was approved, I believe, in August, 1942, by the Board of Directors and not by the membership at large.

I am asking you: Didn't Mr. Olson submit letters of advice to the Board of Directors, for instance, in connection with all those contracts and the business dealings he had out in the field?

A. I shall answer your question this way: Mr. Olson, as an employee of the Pacific Coast Wholesalers' Association, in the capacity of general manager, is viewed by the members of that Association as a very capable and a very honest
250 person. The management of industrial houses employ men as sales managers, as traffic managers, et cetera, and they delegate to them certain authority. They do many things, for which—

Exam. Way: What has that got to do with—

The Witness: (Interrupting) I want just to cover this one point. Mr. Olson is in that position with this organization, and speaking about Pacific Transport or the—in Chicago, Mr. Olson made that trip to Chicago under necessity of getting immediately to that assembly point. We had had for some time a man by the name of Tom Sorenson, well known in this trade, and either through pressure brought upon him, or for some reason sufficient unto himself,

had served a one-day notice of the termination of the arrangement, and there wasn't any time to be lost. And Mr. Olson went east immediately upon that matter to set up another terminal set-up, and thereby executed a contract. And when he came back—he was there—I don't know how long—I couldn't say—but at the next meeting of the Board of Directors that contract was ratified.

Mr. AMES: May I make a correction there? You spoke of the "Pacific Transport." You mean the "Terminal Transport"?

The WITNESS: Terminal Transport in Chicago.

Mr. AMES: Transport Terminal?

The WITNESS: Yes.

Q. (By Mr. TAYLOR) Now, I understand from Mr. Ernst's testimony yesterday that you, Mr. Smith, as Executive Secretary, are in fact, a sort of an assistant secretary and treasurer of the corporation, is that so?

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A. Well, I looked upon myself as the assistant to him. I handled the funds—

Exam. WAY: You are not secretary *pro tem*, are you?

The WITNESS: That "*pro tem*" business, that got me confused. I don't know what I am, but I do know that all of the duties ordinarily carried on by the secretary and treasurer have been carried on by me, and Mr. Ernst's duties have been quite largely confined to the signing of checks.

Q. (By Mr. TAYLOR) Well, Mr. Ernst was unable to give us any information yesterday with respect to funds, operating funds, and otherwise, for the P. C. W. A. or of Mr. Olson. As he mentioned several times, you are the acting secretary and treasurer of the Association, I shall ask you this question, please: Do you know the total amount paid to Mr. Olson by P. C. W. A. or retained by Mr. Olson for his services in 1942?

A. No.

Q. 1943?

A. No.

Q. 1944?

A. No.

Q. You don't know what his total income was nor his expenses for those years?

A. No. sir.

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Q. I believe you stated that you have been in Mr. Olson's office?

A. Yes, sir.

Q. Have you ever made a thorough examination of his books for the purpose of auditing?

A. No, I wouldn't be capable of it.

Q. Have you ever caused such an audit to be made?

A. No, sir.

Mr. TAYLOR: That is all.

Exam. WAY: Any other questions?

(No response.)

Exam. WAY: You are excused.

(Witness excused.)

(A short recess.)

Exam. WAY: Mr. Taylor, I believe you asked yesterday to have Mr. Ernst bring in his freight bill.

Mr. AMES: I made that request.

Exam. WAY: All right. I understand Mr. Ernst is here.

Mr. AMES: I have the freight bill, and if Mr. Ernst will take the stand—

J. H. ERNST recalled as a witness, and having been previously duly sworn, testified further as follows:

Cross Examination (Continued).

253 Q. (By Mr. AMES) Mr. Ernst, yesterday, during the course of your testimony, I asked you to bring in a representative freight bill from your files. Did you bring that?

A. Yes, sir.

Q. Is the paper I hand you that freight bill?

A. Yes, sir.

Q. And this was received by you in the ordinary course of your business?

A. Yes, sir.

Q. And it represents a shipment made for your company through the facilities of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. This, I understand, is a part of your original file, and you do not care to have it go in evidence?

A. Yes.

Exam. WAY: I will ask you if you will have a copy of that bill prepared and submitted as an exhibit in this case.

Mr. GORDON: We will be glad to do that.

Exam. WAY: Can you do it before the hearing closes?

Mr. GORDON: Possibly can do it this afternoon.

Q. (By Mr. AMES) Can you identify the organization called the "Pacific Transportation Company" which is indicated in the rubber stamp on that bill?

A. The only thing I can identify is when I see one of the trucks on the street.

Mr. GORDON: We stipulate that that is the name of
254 the trucking company that performs the distribution of shipments for the P. C. W. A. members in Los Angeles.

Mr. AMES: Very well. Now, will you also stipulate with me, Mr. Gordon, that under the Federal Income Tax Laws in force at the moment the legal forwarder of carload freight using facilities of a rail carrier is exempt from paying income tax on the assembled carload, and that that forwarder, in turn, collects from his consignee the three per cent government tax on the bill of freight, amount rendered to his consignee?

Mr. GORDON: You mean transport tax?

Mr. AMES: Yes. I misspoke that as income tax. That is the transport tax. Will you make that stipulation with me?

Mr. GORDON: Well, not from any unwillingness to stipulate, Mr. Ames, but I would prefer to refer to the particular statute in question. I thought I had it here, so I could do so, but apparently I have mislaid my copy. But I am familiar with the section that there is such a provision, and I would like to have the law speak for itself, for this reason: That the question of the applicability of the transportation tax to the shipments handled by P. C. W. A. has been a matter of discussion and is still unsettled between P. C. W. A. and the Internal Revenue authorities. But as far as the basic facts are concerned, we will stipulate that there
255 is such a provision in the law. It is quite short, and I think it should be cited in the record.

Mr. AMES: Well, as a general proposition, and aside from the status of P. C. W. A., will you stipulate, if correctly stated, the tax liability on the regular forwarder?

Mr. GORDON: I am willing to accept your word for that, and so will stipulate.

Q. (By Mr. AMES) Will it be possible for you, Mr. Ernst, from the records in this room to identify this freight bill with the underlying bill of lading covering that shipment? I am speaking of the bill of lading that underlies the shipment so far as movement from Chicago to Los Angeles is concerned?

A. I don't understand it.

Mr. AMES: May I ask counsel whether he is in a position from the records in this room to identify that freight bill with the underlying bill of lading covering the assembled car from Chicago?

(No Response.)

Mr. AMES: Will you have the car file here this afternoon?

Mr. GORDON: May I suggest that I would like to make this freight bill, have it photostated as an exhibit?

Mr. AMES: My idea, Mr. Gordon, is to show what was done on the tax matter of movement from Chicago to Los Angeles.

Mr. GORDON: We will go into that quite fully, Mr. Ames, and plan to do so, and in this connection, I think you will agree with me that the provision of the tax law rela-
255-A tive to this matter is Section 3475 of the Internal Revenue Code, which covers the three per cent tax payable on transportation charges.

Mr. AMES: The particular paragraph is Paragraph (A) of that section?

Mr. GORDON: Yes.

Mr. AMES: And Paragraph (E) of that section. Possibly, Mr. Examiner, we had better rely upon the entire section. I can't pick out the—

Mr. GORDON: I think so, but that is the section to which you were alluding a while ago?

Mr. AMES: Yes.

Exam. WAY: Is that all from Mr. Ernst?

Mr. AMES: That is all I have.

Exam. WAY: Will you need him this afternoon?

Mr. AMES: I might in connection with that bill of lading when the car file is completed, I might want him. I doubt it, but I might.

Exam. WAY: You are temporarily excused.

Mr. GORDON: I am sure we can stipulate with counsel as to any of the facts, and the identity of the documents.

Mr. AMES: I don't want to inconvenience Mr. Ernst, but—

Exam. WAY: You had better be here, Mr. Ernst.

Mr. GORDON: There was a witness, Mr. Fey, who was subpoenaed, who was sick yesterday, and I understand
256 he is still ill, and with the consent of counsel for the Commission, I would like to know if he may be excused from attendance?

Mr. TAYLOR: In view of Mr. Fey's physical incapacity, it is agreeable to the Commission that he be excused from further attendance at this hearing.

Exam. WAY: He may be excused.

You may be excused, Mr. Ernst.

(Witness excused.)

Mr. TAYLOR: Call Mr. Elmer Jensen.

ELMER JENSEN, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. Elmer Jensen, general manager of the Colyear Motor Sales Company, 1323 South Flower Street, Los Angeles?

A. I am not general manager.

Q. What is your title?

A. Vice-president.

Q. How many stores, Mr. Jensen, does Colyear Motor Sales Company have in California?

A. Just in California?

Q. Yes, sir.

A. 13.

Q. And are most of those located in Southern California?

A. There are seven in Southern California.

257 Q. And you have stores in San Francisco?

A. Three stores in San Francisco.

Q. And do you have stores in other states?

A. In four other states.

Q. What states are those?

A. Oregon, Washington, Idaho, and Arizona.

Q. At the principal cities in those states?

A. One store in Idaho.

Q. You are now and have been a director and president of the Pacific Coast Wholesalers' Association since the incorporation of the Association in September, 1943?

A. Yes, sir.

Q. You were elected to your first office as president by what action?

A. The Board of Directors.

Q. And the Board of Directors were the incorporators, were they not?

A. Yes, sir.

Q. Were you a president of the old Association, succeeding Mr. Colyear, who died?

A. I was not president. I attended meetings in his place while he was ill.

Q. By whom was Mr. Colyear succeeded as president in the old Association?

A. As near as I remember, no successor was named

258 in the old Association, as near as I remember. I may be wrong about that. Referring to the By-Laws of the corporation, please, sir, at Article VI, "Officers", Section 6, "President", it states: "Subject to such supervisory powers, if any, as may be given by the Board of Di-

rectors to the chairman of the Board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and offices of the corporation."

Have you actually participated in the operation of the office of the general manager, Mr. G. A. Olson?

A. Since—you are speaking of the corporation now?

Q. Yes.

A. Yes, I have.

Q. You have been physically present in the office of Mr. Olson?

A. Yes, sir.

Q. For the purposes of the direction of the Pacific Coast Wholesalers' Association?

A. Examination of records—office records.

Q. Have you been there for the purpose of directing the operations of the Association as a forwarder?

A. As a forwarder—since the corporation was formed, I don't remember any specific act—that is, since the
259 corporation was formed.

Q. Since the corporation was formed you have not been in physical attendance in the office of Mr. G. A. Olson?

A. Yes, I have.

Q. For purposes of operation?

A. If an examination of his records would indicate operations, yes.

Q. When were you in Mr. Olson's office next after the date of the incorporation?

A. I was in his office some time last fall. What day, I don't remember.

Q. Sometime last fall? In 1944?

A. Yes, sir.

Q. That was about one year after the date of the incorporation?

A. That is about right.

Q. What was the purpose of your call to Mr. Olson's office at that time?

A. As I had done several times before, I went there to look over their books to see how they handled charges—may I say that? May I go back a little? While the old Association—I was in San Francisco one time and called at the office of Chanslor & Lyon, our competitors there, and visited with Mr. Tom Walsh, who was general manager, I believe, of Chanslor & Lyon Company. And he asked me

if I ever went and looked over Olson's books, and I
260 said yes, I had, and that I had gone over them with Mr. Matthews, who was an employee, or is in Mr. Olson's office. Well, he said, "I wish you would go back again to look after our interests. Chanslor & Lyon's head office is in San Francisco."

So I went again to Mr. Olson's office and looked over his methods again of car accounts, how the charges are assessed, and how they arrive at the savings to the members. And Mr. Colyear, the late president of our company, also asked me to do the same thing. At that time I was not an officer or director of the P. C. W. A., but I made the trips at the request of two other directors, both officers at the time.

Q. All right. When you went into the office of Mr. Olson last fall, what did you do?

A. Looked over the car account sheets.

Q. By "car accounts sheets", you mean individual car transportation manifests?

A. Well, where they assemble all the charges and the collections.

Q. Did you review the accounts of all the members of the Association at that time?

A. All the members that were listed on the particular cards that I looked at.

Q. Did you make an audit of the financial statements in Mr. Olson's office?

A. No, sir.

Q. Did you make an audit of all of the income re-
261 tained by Mr. Olson for the past year—that is, since the date of the incorporation up until the time of your visit to his office?

A. No sir.

Q. Did you look at any of the financial reports pertaining to his expense during that time?

A. Only as shown on the individual car sheets. I only looked at a couple of them.

Q. You were there for the purpose of checking the records incidental to your own membership, or were you there incidental to the purpose of checking records for the entire membership?

A. No, our membership and that of Chanslor & Lyon, at their request.

A. I see, for the purpose of checking specific membership accounts, and not for the purpose of making a supervisory inspection of the gross handlings by Mr. Olson?

A. No, just the two accounts.

Q. As I understand it, then, you did not check the gross income accounts and gross expense charges of Mr. Olson's operations, and made no audit to determine the net earnings of Mr. Olson from the deductions that had been effected during the past year or the first year of the corporation's operations? Is that so?

A. I did not do that.

Q. What else did you do there at that time?

A. That is all the—as far as examining the rec-
262 ords, that is all I did at that time, just had a general discussion with Mr. Olson, after I finished with Mr. Matthews, about the P. C. W. A. business in general, and not specific.

Q. Did you determine the total amount paid to Mr. Olson during any one year for his services?

A. No.

Q. Neither gross nor net?

A. No.

Q. Either before or after incorporation?

A. I did not.

Q. How much time did you spend in Mr. Olson's office at this time you mentioned?

A. Between ~~two~~ and three hours.

Q. And for the purpose of looking into the account of Chanslor & Lyon to some extent and for the purpose of inquiring concerning the handling of your own account? Is that right?

A. That is right.

Q. Have you, since being president of the corporation, ever ordered an audit of Mr. Olson's accounts to establish just what net amount he has received from the operations of P. C. W. A.?

A. I have not.

Q. You have no ideas as to the amount of money he makes out of his position as general manager of the corporation?

A. No, sir.

Q. Now, with reference to Article II, "Member-
263 ship", Section 6, "Membership Fees, Assessments, and Revolving Fund", Subdivision (c) of the By-Laws, "Revolving Fund", how much money has accumulated in the five cents per 100 pounds revolving fund, which was established at or near the time the Association was incorporated, if you know?

A. In the total revolving fund?

Q. Yes.

A. I don't know.

Q. You don't know what the accumulation in that fund has been?

A. I don't have the report at hand of that. It was reported to us recently, but I don't have that report.

Q. What was the recent report regarding that revolving fund?

A. I believe it was over $30,000.00.

Q. From that fund have you ever been advised that any disbursements have been made to the members and others?

A. By whom do you mean, "others"?

Q. Well, what expenses, if any, have been paid by Mr. Olson out of that revolving fund?

A. The revolving fund is used as a working capital.

Q. Yes. Well, now, that brings up a point here: In view of the fact that that Association had theretofore operated successfully without this assessed five cents per hundred pounds revolving fund, why was it necessary to assess the membership this addition deduction to be retained by Mr. Olson?

A. Don't use the word "assessment". I don't
264 believe it is quite right, but it is not an amount that will not be paid back to the members. It may be mentioned as an assessment in there, but it was really to provide funds with which to pay freight bills and not overdraw the bank account between the time the freight bill was paid to the carriers and the time the money was collected from the individual members.

Q. Well, let us look for a moment at the specific language, at Section 6, Subdivision (c), "Revolving Fund". It reads, briefly: "For the purpose of providing working capital, there shall also be paid to the corporation by each member five cents per 100 pounds of all freight handled by the corporation for and on behalf of each member, the proceeds of which shall be used as a revolving fund for a period not exceeding two years. Refunds shall be made to the members pro rata of the payments so made into the revolving fund at such times and in such amounts as the Board of Directors may determine, together with any accumulation of funds collected by assessments in excess of the normal requirements of the corporation for overhead, management, and administrative expenses."

Now, in the absence of any financial reports, any reports of any kind, at least, that we have been able to find, fur-

nished by Mr. Olson, do the Board of Directors attempt at any time to determine what the expenses are of the Pacific Coast Wholesalers' Association with respect to the
265 normal requirements of the corporation for overhead, management, and administrative expenses.

A. We have an agreement with Mr. Olson as to how much per 100 pounds will be allowed him for such expenses. The individual items, we haven't concerned ourselves with them, such as rent, salaries and the like.

Q. Do you know how much in cents per 100 pounds is being withheld by Mr. Olson in his allowance for management expenses, insurance, and for legal expenses?

A. 15-¼ cents.

Q. That is the total amount of allowances to be retained by Mr. Olson from his collections for those purposes in addition to the five cent revolving fund, which we have just discussed?

A. That does not include the revolving fund.

Q. What is your breakdown of the 15-¼ cents per 100 pounds?

Mr. Gordon: I was going to submit that I think the corporation records are the best evidence on that. The law requires corporation to keep the minutes, and the minutes have been kept. The minutes show the amounts authorized to be set up in the revolving fund and the amounts authorized to be taken by Olson for various purposes of the corporation, including the payment of the overhead expenses, legal expenses, and so on.

Exam. Way: I am not so sure that he can rely on the minutes wholly, in view of the testimony that other meetings were held and no minutes were made, and that
266 the Executive Secretary did not record the minutes.

Mr. Gordon: I am not surprised at that, if the Examiner please, but I want to direct the attention of the Commission and counsel to the fact that the unincorporated Association, the voluntary association, is a very different organization from the corporation. The voluntary association was not under any legal requirement to do anything. They could associate themselves together, and they could run it as carelessly or as carefully as they saw fit without transgressing any legal provisions. When it came to the incorporation, it was a totally different thing. That was one of the reasons for incorporating. So when I urged yesterday that the minutes were the best evidence of what happened at the directors' meetings, I did it with that thought in

mind, and for the reason that the corporate minutes are the best evidence of what happened at corporation meetings. Unless it is shown that there was an act of the officers not to properly record it, that is what happened. As to the old Association, it is a different story. And it was only as to the old Association, as to any failure to keep the minutes.

Exam. WAY: I don't know whether that was made plain or not on the record. My attention was not called to that at the time, At least, it didn't make any impression on me, at least.

Mr. GORDON: I am sure the record will so show,
267 and if it doesn't, it can be very readily established.

Mr. AMES: If the Examiner please, I may be wrong, and if I am not wrong, I think the record being made, if improperly, should have a second chance. The testimony of Mr. Jensen now is that out of this 15-¼ cents commission paid to Mr. Olson, that he pays Insurance premiums and legal expense. I don't understand that those two items come out of that. And I think right at this point we should develop whether they do.

Exam. WAY: Well, all the facts must be developed, as to exactly what was done, irrespective of the minutes. Of course, the minutes show the authority of the officers, and whether or not the officers carry out those provisions is something else.

Mr. AMES: I am sure that the P. C. W. A. has insurance, or risk cargo insurance, and the P. C. W. A. are incurring legal expense, undoubtedly legal expense, on account of this hearing, but I don't understand Mr. Olson pays those items out of the 15-¼ cents. Is that correct, Mr. Jensen?

The WITNESS: Mr. Olson does not pay those items out of the 15-¼ cents.

Mr. AMES: Nor does he pay those insurance premiums out of his cargo?

The WITNESS: No.

Mr. AMES: I thought I was right, but the record shows otherwise.

Mr. TAYLOR: May I make a reply to Mr. Gordon's
268 suggestion at this time, please? The By-Laws of the corporation state specifically that the president shall have general supervision and direction and control over the business and officers of the corporation. We are calling upon Mr. Jensen in his capacity as president to furnish us information as to his knowledge of the break-

down of the 15-¼ cent allowance to Mr. Olson, which Mr. Olson retains, and advise us specifically what that is composed of. We would like to have the costs of application making up that 15-¼ cents per 100 pounds.

The WITNESS: By that do you mean, Mr. Taylor, just what Mr. Olson, how he spends the 15-¼ cents?

Q. (By Mr. TAYLOR) Yes. Also, the allocation of the expenses submitted by Mr. Olson, if he does submit an allocation, that makes up the 15-¼ cents.

A. The opinion of the Board of Directors about that 15-¼ cents is that Mr. Olson runs the office as general manager of the Association for 15-¼ cents per 100 pounds. How much he pays for rent or employees, or how much he retains for his personal benefit, we don't know.

Q. Upon whose proposal was the 15-¼ cents per 100 pounds made?

A. Mr. Olson was asked by the Board how much—not how much—the amount of 15 was eventually suggested after questioning by the Board.

Q. Mr. Olson made a presentation to the Board of the amounts or allowances that he would be satisfied with
269 to operate as general manager, is that right?

A. That is right, and they were agreed to by the Board, that they would be paid.

Q. Did he submit any financial reports at all as the basis for his contention that 15-¼ overall would be sufficient to operate the affairs of the Association?

A. He did not.

Q. And in connection with the five cents revolving fund, the additional fund?

A. Yes, sir.

Q. Who proposed that fund to be set up?

A. Mr. Olson.

Exam. WAY: Now, what is that revolving fund used for, specifically?

The WITNESS: It is used as a working fund. That is, Mr. money that was necessary to carry on the business of the Olson was not financially able to advance the amount of Association, due to the fact that we have such large receivables, the freight must be paid to the transportation company within a certain number of days, and the freight bills are prepared and sent to the members, and there is always that large accounts receivable outstanding.

Exam. WAY: Whose money is the revolving funds?

The WITNESS: Is belongs to the members.

Exam. WAY: That is to be returned at a given date?

270 The WITNESS: Yes, sir.

Exam. WAY: In other words, as far as the Association is concerned, it is only a trust fund?

The WITNESS: That is all. The Colyear Motor Company has their account set up as an accounts receivable, the same as any other account.

Q. (By Mr. TAYLOR) Do you know of any part of the revolving fund that has been returned to any member?

A. As far as I know, no part has been returned.

Q. Referring to Article VII of the By-Laws, "Annual Report", Section 1, reads:

"The Board of Directors shall cause to be sent to the members of the corporation not later than the 25th day of January of each year an annual report in compliance with the provisions of Section 358 of the Civil Code of California."

As president of the corporation, was such annual report compiled and sent to the members?

A. At their meeting in January, the report was not completed yet.

Q. And the answer is that the report has not been prepared and has not been sent?

A. Yes. And to adjust that the annual meeting date has been extended, so that the report—by our last meeting—the annual meeting now, I believe, is to be in March, so the general manager will have his annual report ready for the annual meeting of the members.

271 Q. I believe that is all, Mr. Jensen.

Exam. WAY: Cross examine.

Cross Examination.

Q. (By Mr. AMES) I have only a few questions, Mr. Jensen. Does the Colyear Motor Sales Company effect a transportation savings by using the facilities of P. C. W. A.?

A. Yes, sir.

Q. Do you have customers running houses that buy material from you, or run branch houses for you?

A. When you say "for us", do you mean branch houses of our own?

Q. Yes, go into that phase of it: Do you have branch stores of your own in these other states?

A. Oh, yes, we have branches in four states.

Q. Suppose the forwarder charge that you advance to the company—we will just use these figures for illustrative purposes—is $2.40, and later you get a rebate back from the

Association of 30 cents. Do you give these branch houses of yours the benefit of that savings?

Mr. GORDON: I object. Incompetent, irrelevant, and immaterial.

Exam. WAY: I think we should know about that.

The WITNESS: Let us first understand that these branches are totally owned by the Colyear Motor Sales Company. You understand that?

272 Mr. AMES: Yes.

The WITNESS: And our branches are credited, each branch individually is credited with the savings on the shipment to that branch.

Q. (By Mr. AMES) Now, suppose that a customer of yours, other than a branch house, at a point in California, outside of Los Angeles, purchases something from you, do you give him the benefit of this saving, or do you keep it yourself?

A. We pay all the freight to any customers of ours. Our goods are all sold f. o. b., our own warehouse, so we pay the freight.

Q. You pay the freight to the customers, do you not?

A. Yes.

Q. Are all those transactions handled on that basis?

A. That we pay to the customer?

Q. Yes.

A. Yes, sir.

Q. Have you, in your capacity of president, and I understand you are president of the corporation, is that correct?

A. That is right.

Q. Have you, in your capacity of president of the corporation, ever given Mr. Olson any specific order or direction regarding the physical methods of his operations?

A. The last that I remember was in regard to the handling of our freight into Fresno. We were not satisfied with the way our freight was being delivered to

273 Fresno, so we instructed Mr. Olson that we wanted another carrier to handle our freight going to Fresno, which at that time was going to San Francisco and trucked from San Francisco to Fresno, and after that changes were made, and the freight now goes into Los Angeles and is trucked from Los Angeles to Fresno. That was for the Chanslor & Lyon Company.

Q. Have you ever given him any general instructions how to handle the freight at Chicago or how to assemble it at Chicago?

A. I haven't, but I know Mr. Colyear did.

Q. You haven't as president?

A. No. There have been changes in effect since I have been president.

Q. Generally speaking, except in special cases like at Fresno, that is, you let the operating details to Mr. Olson?

A. As long as they are satisfied with it, yes, sir.

Q. How long has this revolving fund been going on, since the incorporation?

A. Yes.

Q. Do the contributions you make to the revolving fund reduce, correspondingly, the amount of savings in effect?

A. No.

Q. Why not?

A. When we receive the statement from Mr. Olson with a check for our savings for the month, the statement shows the amount transferred to the revolving fund, we, in
274 turn—this is strictly bookkeeping now, but I will tell you how we handle it—we, in turn, when we receive such a statement credit our freight accounts with the total amount before the revolving fund account is deducted. Then the revolving fund account is set up in our accounts receivable as the amount due from the Pacific Coast Wholesalers' Association.

Exam. WAY: The amount of the revolving fund is changing from month to month?

The WITNESS: It is based on tonnage, and therefore changes.

Q. (By Mr. Ames) And you put it in the accounts receivable in the hope it will come back to you?

A. It isn't a "hope". We know it is coming back.

Q. How do you know it?

A. The money is in the Association, and every two years is will be paid back.

Q. Does that go into the freight fund or into the freight account, the revolving fund?

A. Yes, sir.

Q. It is not kept in the account?

A. No, it is used for paying freight.

Q. Do you know whether any of it has been used or not?

A. It is used all the time.

Q. Do you know that?

A. Yes, sir.

Q. As I understood your direct testimony, you set
275 up that fund as a sort of a pad to protect the Association on the advancement of freight charges during

the time they had to advance it and didn't have it from the members?

A. It is not to "protect". It is to furnish funds to carry on the business of the Association, due to the large accounts receivable we have.

Q. But only on the chance that you are afraid you might have so much freight to pay to the underlying carriers on a given date, that Mr. Olson might not have—the freight account might not have the money, that you use this revolving fund for their protection?

A. We are not afraid. We know it is a fact.

Q. None of the actual expenses, such as railroad freight bills, or anything of that kind, are paid out of that fund, are they? That is, in the final analysis? They may be advanced out of this fund?

A. The money is used to pay, but the money all eventually comes back into the fund again, so that is all represented by accounts receivable just the same as cash.

Q. Now, I don't mean this question to be personal in any sense at all. I want you to be sure of that. Are the legal expenses of this investigation being paid out of that revolving fund or will is be paid out of some other fund?

A. It will not be paid out of the revolving fund.

Q. What other fund will it be paid out of?

276 A. The other fund. The name of it is the general fund, I believe.

Q. The general fund is the fund that takes those membership fees, and things of that kind?

A. Yes, sir.

Q. It will not come out of the so-called freight account?

A. No, sir.

Q. Mr. Jensen, in the absence of the services of P. C. W. A., which you are using now, or the services of any similar Association, could the traffic of your company which they are handling, be handled by regular forwarders?

A. Well, three forwarders told me yesterday they could handle it.

Q. As far as you are concerned, could it be handled by the regular forwarders in the absence of this Association?

A. It could be handled, yes, at a greater expense to us.

Q. I am not talking about expense.

A. It could be handled, yes, sir.

Q. Are you handling any of your business at all now with regular forwarders?

A. There is some business that goes through regular forwarders.

Q. Describe that business, when they happen to get some of it.

A. There are some of our freight that originates in New York. It is handled by—one we shipped, I believe due to jealousy, they would not take our freight, but it was
277 handled by a forwarder from New York into Chicago, shipments of—I believe the Ditmer Gear Company, I think, Syracuse, New York.

Mr. Gordon: Lockport.

The Witness: Lockport, New York.

Q. (By Mr. Ames) What other traffic was and is now being handled by regular forwarders?

A. I don't remember off hand.

Q. You do have some?

A. We have some. We have some shipments that come in here from Milwaukee, Wisconsin, pistons that come in here from Denver, and from Denver—L. A. Trucking Company.

Q. Do you handle that routing?

A. No, the factory controls that. They pay the freight and they claim they can truck it cheaper than by forwarder. So they insist on that.

Q. Is there any traffic at the present time over which you do have control on routing, which is moving by regular forwarders?

A. None that I know of. I don't recall any at the present time.

Q. Do you understand brackets in traffic?

A. I don't know anything about brackets.

Q. You are not traffic manager?

A. No, I am not.

Q. I thought you were. That is all I have.

Exam. Way: Referring again to that revolving
278 fund, it is part of what?

The Witness: It is five cents per hundred pounds of freight moving through the Association.

Exam. Way: And that amount is a fund used as a working capital?

The Witness: Yes.

Exam. Way: So, the larger your business, that is, the more freight you handle, the more money you have in that fund?

The Witness: That is correct.

Exam. Way: And that has continued to grow since the beginning of your operations?

The WITNESS: Yes, sir.

Exam. WAY: Do you know how much money you have got in that fund?

The WITNESS: As near as I can remember, on the last report that we had, there was something over $30,000.00 in the fund. I am not sure of the amount, and I can get the amount.

Exam. WAY: What working capital is necessary for your Association?

The WITNESS: Why do we need a working capital?

Exam. WAY: No. I say, what amount of money is necessary as a working capital?

The WITNESS: We need an amount fully as much as we have in there now, because as our tonnage is in-
279 creased, our requirements in the working fund have likewise increased. It increases our accounts receivable and the amount of money that we must pay out each day for freight. That is the reason it is necessary to increase the revolving fund.

Exam. WAY: Well, eventually, this revolving fund will grow to very large proportions, will it not?

The WITNESS: No, sir.

Exam. WAY: How is that regulated?

The WITNESS: But after a period of two years we pay back to the members the amount that was withheld from savings two years ago, so that at no time there will be no more than two years withheld in the fund.

Exam. WAY: Have there been any refunds of the revolving fund to members?

The WITNESS: No, sir.

Exam. WAY: All right. That is all.

Q. (By Mr. Gordon) In that connection, Mr. Jensen, you are an accountant, are you not?

A. Yes, sir.

Q. And the idea of a revolving fund is not something new that originated with P. C. W. A., is it?

A. No, sir.

Q. That is a common device used in many business organizations, isn't it?

A. Yes, sir.

280 Q. And isn't it a very notable device used in non-profit associations, cooperative associations, where the necessity for working capital has to be met by the members?

A. Yes, sir.

Q. Do you know anything about the California Fruit Exchange and how it operates its revolving fund?

A. No, I do not.

Q. But from your experience in accountancy, you do know that such a method is used?

A. Yes, sir.

Q. And it is a common method used in business?

A. Yes, sir.

Q. Now, at the time the corporation was formed, Mr. Jensen, and the By-Laws were submitted for discussion, do you recall that that subject was extensively discussed by the directors about how the revolving fund would be used?

A. Yes, sir, it was.

Q. And do you recall that it was then stated that the revolving fund would be always under the control of the directors, so that if it ever produced more money than they needed, that they could reduce the amount?

A. Yes, sir, and it was also so stated in the incorporation.

Q. And it could reduce the amount owing to the fact that the repayments would be made back to the members?

A. Yes, sir.

281 Q. Now, it is a matter of record, I believe, in the minutes, and I will call your attention to them, and these will be put in evidence, that while the corporation was organized in September, September 23, 1943, as shown by the copy of the Articles contained in the minute book, the first meeting of the Board of Directors was held on what date?

A. December 14, 1943.

Q. And you recognize this book, do you not, as the minute book of the corporation?

A. Yes, sir.

Q. And these minutes have been signed by you as president?

A. Yes, sir.

Q. And attested by Mr. Ernst as secretary?

A. Yes, sir.

Q. Now, I would like to direct your attention to the minutes of July 17, 1944, to the following statement: Secretary Ernst announced that all of the 35 members of the unincorporated Pacific Coast Wholesalers' Association filed acceptances of membership in this corporation. Thereupon, upon motion duly made, seconded, and unanimously carried, the following resolution was adopted: Resolved, That all the assets of its Association be assigned and transferred

under the Pacific Coast Wholesalers' Association, a non-profit corporation, in consideration of said corporation assuming all the liabilities and obligations of this As-
282 sociation as of July 1, 1944. In view of that, Mr. Jensen, isn't it a fact that the corporation, as such, did not begin to handle the funds and affairs of its members until following this meeting in July when they took over the operation from the old Association?

A. They didn't handle the funds until after July 1, 1944.

Q. So that when you refer to their having been no repayments made out of the revolving fund, you have in mind that the revolving fund has been building up only from that period down to the present time, have you not?

A. Yes, sir.

Q. And it is not yet ready or not yet feasible to make refunds or repayments to members out of the revolving fund?

A. That is right.

Q. Now, likewise, with reference to the annual report, I believe you were interrogated as to whether or not an annual report was made as of Jan. 10, 1945, the first meeting of the members, for the same reason there as in the case of the revolving fund, that the corporation had not been operating long enough to require an annual report and that the books had not been brought down to the end of the year to enable the officials and members of the company to make an annual report on January 10th?

A. Yes, sir; that is right. We were informed that it would take them until the end of January to complete the report.

Q. And for that purpose the annual meeting of
283 the members was held on January 10th and was postponed until March?

A. That is correct.

Q. Now, Mr. Jensen, just in order to clear the record, I believe the minutes will show that you became president of the old Association some time before the incorporation of the new organization, did you not?

A. After Mr. Colyear passed away, I took his place.

Q. You were elected president in his place?

A. Yes, sir.

Q. So you did act as president of the old association during the remaining couple of years before the corporation took over?

A. It was a little over a year.

Q. And am I correct in my understanding that you have on more than one occasion gone to the offices of Mr. Olson

for the purpose of making a check upon the books and records of P. C. W. A. pertaining particularly to your shipments, that is, the Colyear Motor Sales Company shipments, and to shipments of Chanslor & Lyon Company?

A. Yes, sir.

Q. And in connection with that, Mr. Jensen, didn't you also see and check on the general method of handling business?

A. Yes, sir.

Q. That would apply to all members?

A. There were several other members listed on the same sheets that I looked at.

284 Q. You did not undertake to make any general audit of the company books?

A. No, sir, I did not.

Q. But did you talk with Mr. Olson and his assistant, Mr. G. H. Matthews?

A. I talked to Mr. Matthews, and then Mr. Olson.

Q. Concerning the general method of operation?

A. Yes, sir.

Q. During the time that you have been president first of the old Association and then of the corporation, I will ask you to state if it isn't a fact that the directors' meetings, which were held, usually took place approximately two hours each?

A. I don't remember a meeting that was less than two hours.

Q. And at those directors' meetings, Mr. Jensen, were there discussions between the directors and the general manager, Mr. Olson, concerning the affairs of the association, the corporation?

A. Mr. Olson would always bring with him reports of expenses of the Association, both the old Association and the new corporation, and give us a report on tonnage handled; occasionally members whose tonnage seemed to be falling off, and the reports of savings to the members and the amount of tonnage handled by the individual members—rather, for the individual members, and many such other reports. In short, a complete, general report of opera-

285 tions, of the Association, or the corporation.

Q. And were those reports made verbally or in writing?

A. They were verbal reports, but he referred to report forms which he had in his case, but they were not left in the Association's office.

Q. And when these reports were made, were there discussions between the directors and the general manager?

A. Yes, sir.

Q. Was there any action taken with reference to your approval or disapproval?

A. There were several members suggested to the Association, which, after discussion, decided not to bring the matter to a vote. I don't believe it will be disclosed by the minutes, because there was no motion made. Just the members would decide not— no one would vote—that is, no one would vote to accept them as members, after discussion. That, of course, will not be disclosed by the minutes.

Q. That is where new firms were suggested as possible members?

A. Yes, sir.

Q. And there have been occasions when new firms were admitted to membership?

A. Yes, sir.

Q. And do you know upon whose recommendation or sponsorship they were admitted, whether it was upon Mr. Olson's or some one else's?

286 A. The new members were admitted to membership, sponsored by a member of the Association, that is, a member at that time.

Q. Now, in determining who would or would not be admitted to membership, do you know what considerations were mentioned by the directors as governing their decision or influence in their decision?

A. It was generally whether or not the commodities shipped by them were similar to the commodities then being handled by the Association, mostly automotive parts, supplies, equipment, and hardware items.

Q. And was some consideration given as to whether or not they were engaged in retail operations or wholesale operations?

A. I don't know of any retail concerns that has ever been accepted to membership.

Q. And was consideration given to their volume of tonnage, as to whether they would be desirable as a member from that standpoint?

A. That I don't believe was discussed, as to the possible tonnage.

Q. Was consideration given as to whether or not present members located in the same general vicinity or same community were favorable to their admission to membership?

A. In all cases they were sponsored by a member in their own locality, and, as such, they showed the approval of at least one representative member in that locality that the application should be given consideration by the Board of Directors.

287 Q. You have sat through the hearing here today and yesterday and listened, have you not?

A. Yes, sir.

Q. Now, I would like to ask you the same question that was propounded to an earlier witness or witnesses to this effect: From your knowledge of the business generally and your experience of the operations of the Pacific Coast Wholesalers' Association, was the Association, in fact, managed and supervised by its Board of Directors?

A. Yes, sir.

Q. At any time was it, in fact; managed and controlled by G. A. Olson, and the Board of Directors merely used as a rubber stamp for his operations?

A. At no time.

Q. You have been identified with Colyear Motor Sales Company for a long time, have you not?

A. Yes, sir.

Q. Were you identified with them when Mr. Colyear first interested himself in the formation of this Association?

A. I have been with them 31 years.

Q. Did you hear the testimony of Mr. Sol Smith with reference to the manner in which Mr. Colyear initiated the idea of forming this Association?

A. Yes, sir.

Q. Do you know whether or not that is true?

288 A. It is true.

Q. Do you know it of your own knowledge?

A. Yes, sir.

Q. Did Mr. Colyear discuss it with you from time to time?

A. Yes, sir.

Q. You were asked if this Association was not in operation, whether your shipments could be handled by the regular freight forwarders, and I believe you stated that it could?

A. Well, they told me it could.

Q. And your shipments could be handled by the railroads themselves, could they not?

A. Yes, sir.

Q. If the freight forwarders handled them, do you know whether your transportation costs would be more or less

than they are as they are now handled through the Association?

A. They would be more, unless they are handing out the same kind of deal they used to.

Q. Do you mean by that freight forwarders some time in the past made special rates to some shippers?

Exam. WAY: Are you going to offer specific proof of that?

Mr. GORDON: I just want to know.

Mr. AMES: Talking about before regulation, I take it?

Q. (By Mr. GORDON) Were you referring to a time prior to May, 1942?

A. Yes, sir.

289 Q. And do you have personal knowledge of special arrangements having been made by forwarders with the shippers prior to that time?

A. Yes, sir.

Q. And that is what you alluded to a moment ago?

A. Yes, sir.

Q. Now, then, if you didn't use either the association method of the Pacific Coast Wholesalers' Association and didn't use the forwarders as your transportation agent, but used the l. c. l. rail freight, would that still be higher than the forwarder rate?

A. Yes, sir.

Q. Do you get each month a statement showing your tonnage, and the amount of savings realized on your transportation?

A. Yes, sir.

Q. Do you know whether or not similar statements are received by all other members, or are sent to all other members?

A. They are.

Q. When you receive your statements of that kind, do you make any check of them to satisfy yourself as to their correctness, the correctness of those statements?

A. No, I don't.

Q. Do you make a check with your tonnage to show that your tonnage is correctly shown?

A. We do not.

290 Q. But you have made these periodical checks in Mr. Olson's office?

A. In Mr. Olson's office.

Q. To determine the correctness of your account?

A. Yes, sir.

Q. I take it you found it operates to your advantage, have you?

A. Yes, sir.

Q. You desire to continue?

A. Yes, sir.

Q. To your knowledge has the Pacific Coast Wholesalers' Association, either prior to the time of incorporation or subsequent thereto, ever offered to handle freight for anybody and everybody, the public generally, who might want to ship in their cars?

A. They have not.

Q. Do you know whether or not freight has ever been offered to you by non-members and refused?

Mr. AMES: I object to the second question and move to strike out the first question and the answer on the ground that the witness is not qualified to answer. The witness is not an operating man. I contend the witness is utterly without knowledge to answer that question. Mr. Olson would be with knowledge, but this witness is not.

Exam. WAY: Do you know about the affairs of the
291 Association, or the offers they had, or the shipments that are made by this Association?

The WITNESS: I haven't checked each car that has come through, no.

Exam. WAY: You don't know what shipments are made besides yours?

The WITNESS: There was one shipment reported in our last meeting that got in our car by mistake somehow, and that was not a member.

Mr. AMES: My point is, Mr. Examiner, this witness hasn't been qualified.

Exam. WAY: I agree with you, Mr. Ames, and I think if Mr. Gordon desires to qualify him, and if he is qualified, he can answer.

Q. (By Mr. GORDON) Mr. Jensen, to your knowledge, has there ever been any authorization given by you, as president, or by any other official, or by the Board of Directors to Mr. Olson to arrange for handling freight of anybody that might wish to put freight into the car with the P. C. W. A.?

A. Instructions to the contrary have been given to Mr. Olson.

Q. As far as you know the members have endeavored to operate this Association for the mutual benefit of themselves? Is that right?

A. Yes, sir.

Q. And is that the way you desire to continue it?
292 A. Yes, sir.
Q. And you intend to continue it, as far as you are able, to control its operations?
A. Yes, sir.
Q. That is all.

Re-direct Examination.

Q. (By Mr. TAYLOR) Now, prior to the effective date of this forwarding Act, May 26, 1942, this Association did handle freight for other members, did it not, Mr. Jensen?
A. For other than members?
Q. Yes, for other than members? There was a specific provision permitting that in your old minutes, was there not?
A. I believe some years ago there were—in fact, I won't say, "I believe." I know that some years ago there were some shipments handled for M. H. Klinger Company.
Exam. WAY: Was that prior to the enactment of Part IV?
The WITNESS: What date was that enactment?
Mr. GORDON: That was in 1942.
The WITNESS: That was before 1942.
Q. (By Mr. TAYLOR) Referring to the minutes of the meeting, July 17, 1935, of the old Association, at page 2 it reads:
"Moved: That the traffic manager be authorized to include freight for non-member shippers approved by the Board of Directors in Association pool cars and to retain the net proceeds thereof until further notice by
293 the Board of Directors, provided that said non-member shippers shall receive no greater transportation advantage than members of this Association."
Was that resolution and authority ever rescinded up until the time of the Freight Forwarder enactment?
A. I don't know. I did not attend the meetings back in that time.
Q. Well, to your knowledge, that authority has never been rescinded insofar as the old Association is concerned?
A. The minutes may not disclose so, but I definitely know that Mr. Olson was instructed to—that was several years ago—to continue handling these shipments for Mike H. Klinger, and not handle regular like shipments. It may not be recorded in the minutes, but he definitely was instructed so.
Q. What was the nature of the business of this firm?
A. Klinger Company?

Q. Yes.

A. Automotive.

Q. And I assume that that instruction was issued by the Board of Directors upon complaint of one of your automobile dealers? Is that right? I should say, "automobile parts dealer."

A. No, it was not a complaint.

Q. They were, however, one of your competitors, were they not?

A. M. H. Klinger Company is a factory representative. They are not competitors. They sell to us and to
294 several of the members in the Association.

Q. Well, back to the original question: Mr. Olson did have authority, did have general authority to include the freight of non-members in the Association pool cars, did he not?

A. I figure, reading from the minutes there, I would say, "Yes."

Q. You don't know that those instructions were ever rescinded?

A. They were verbally, yes, sir.

Q. At what time?

A. I believe it was 1940 or 1941.

Q. And did you supervise the accounts of Mr. Olson, beginning at that time, to see that non-member freight was not loaded in the Association pool cars?

A. No.

Q. There was no check made of it?

A. No.

Q. Now, as president and a director of the Association, did you sit in on the membership committee?

A. The membership meeting in January, 1945?

Q. Well, in any of the meetings, past meetings? That is, as a corporation, and as a director of the old Association, during which members' applications were considered?

A. Yes, sir.

Q. And you passed on their qualifications, did you not?

A. Motion would be made and seconded to accept
295 them as members in the Board of Directors meeting.

Q. That is right.

A. That was not final, though.

Q. How would you act on the applications finally?

A. It would be referred to the membership as a whole, and they would vote on it.

Q. You are quite sure of that?

A. I received one in my office this week of a proposed member—to vote.

Q. This week, but did you ever receive any under the old Association or prior to the Commission's first field investigation in December, 1943?

A. I would have to look back to see.

Q. Well, to the best of your memory now, did you ever receive any such?

A. I couldn't name one for you. I am not sure.

Q. Now, you did consider the qualifications of members in those membership meetings?

A. Yes, sir.

Q. Was Mr. Olson usually present at those meetings?

A. Yes, sir.

Q. And would he make certain recommendations in connection with those applications?

A. If the applicant was not known in the Board of Directors, such as an applicant in Seattle or Salt Lake,
296 Mr. Olson would report to us the nature of the concern and the type of business they were in, at times the tonnage, their monthly or yearly tonnage, and after such report it would be voted on by the Board.

Q. You mentioned Seattle. I note that A. H. Cox & Company were admitted as members in November, 1942. What was the nature of the business of that firm? What commodity do they handle chiefly?

A. I don't know.

Q. Do you know whether they handle road building machinery?

A. I do not know.

Q. Northern Commercial Company, Coleman Building, is another member which was admitted to membership in November, 1942. Do you know what their commodities consist of, chiefly?

A. I don't know the company.

Q. Star Machinery Company were admitted to membership in March, 1942. What type of freight does that concern handle?

A. Heavy hardware and automotive machine shop equipment, and heavy machinery.

Q. Machinery for the lumber industry?

A. They may handle it for the lumber industry.

Q. At Salt Lake City, Consolidated Wagon Machine Company, admitted in August, 1942. I suppose you know from the title what type of freight that concern handles?

A. I would only know from the title, because I
297 don't know the concern.

Q. W. H. Bintz Company, admitted to membership August, 1942. What type of freight does that concern handle?

A. I don't know.

Q. The Galigher Company admitted to membership 1942. What type of freight does than concern handle?

A. I don't know now.

Q. Northwest Engineering Company, Green Bay, Wisconsin, admitted to membership August, 1935. Perhaps you will know that one, what type of freight that concern handles.

A. I don't know. We don't deal with them.

Q. When did you sit in the membership committee and vote on those concerns to membership?

A. It was in 1935.

Q. But these others you do recognize?

A. I was in the meeting at that time.

Q. And upon whose recommendation did you vote to admit these concerns in membership, if you did do so?

A. In each case the business they were in was explained to us at that time, and the day we voted we would know what business they were in, and after that was explained, we voted them into membership.

Q. As a matter of fact, you have pretty well lost contact with those individual accounts since that date of the consideration of the applications in membership?

298 A. Yes. I have no occasion to contact them.

Q. Although you have been, according to the by-laws, in active charge of the operations of the Association?

Mr. GORDON: I object to that. Irrelevant and immaterial, and argumentative. It doesn't show any purpose whatever, other than the witness, who was president, hasn't performed his duties. I don't think that is anything but sheer argument. I ask that it be stricken out.

Exam. WAY: I don't think it is important enough.

Mr. TAYLOR: That is all right. I will withdraw the question.

Q. (By Mr. TAYLOR) Now, Mr. Jensen, did you participate in the drafting of the by-laws of the corporation?

A. The actual drafting?

Q. Well, the rough draft preparation, I should say.

A. No, sir.

Q. You took no part at all in such drafting?

A. No.

Q. You were president of the old Association at that time?

A. Yes, sir.

Q. And you became president in the newly incorporated Association?

A. Yes, sir.

Q. Who did participate in the rough drafting of the articles and by-laws of the newly formed Association?

299 A. Mr. Hugh Gordon.

Q. Aided by whom, representing the Association?

A. I wouldn't name anyone that aided him. I am not sure.

Q. Did he just go out to his office, and without any knowledge of the Association, just sit down and dictate articles of incorporation, and later sit down and dictate the by-laws? Did he do that?

A. No.

Q. Who instructed him to draft these documents in the first instance?

A. He was instructed by the Board of Directors.

Q. Who of the Board of Directors assisted him in the preparation of these articles and the sections of these documents?

A. Most of the members of the Board of Directors assisted him.

Q. Did Mr. Olson assist him?

A. I believe he did.

Q. Did Mr. Sol Smith assist him?

A. Yes.

Q. Now, referring to Article II, "Membership," Section 1, "Qualification and Election of Members," as set forth in the by-laws, which reads:

"Membership in this corporation shall be confined to persons, firms or corporations engaged in business as wholesalers, or such other business or activity as may be approved by the Board of Directors, * * *"

300 That provision there undoubtedly was suggested by Mr. Olson or Mr. Sol Smith? Is that not correct?

A. No.

Mr. GORDON: That is objected to as argumentative, assuming facts not in evidence.

Exam. WAY: Change the form of the question.

Q. (By Mr. TAYLOR) Well, do you know which of these two gentlemen, G. A. Olson, or Mr. Sol Smith—

Mr. GORDON: I submit, manifestly, this witness could not know who suggested to me what provisions to go in there. If counsel wants a statement of what happened, I will make a statement.

Mr. TAYLOR: As a member of the Board of Directors and as president he ought to know.

Exam. WAY: Let us not have any argument about it. Ask him if there were any suggestions made, if he knows of any suggestions, and if he knows, what they were.

Q. (By Mr. TAYLOR) Well, do you know who proposed the limitation for qualifications and election of membership?

A. The limitation of members, I believe, was suggested by the Board of Directors. The qualifications, I wouldn't answer. I don't know the answer. That was not recommended, that is, before the rough draft of the by-laws were written.

(At 12:30 o'clock p. m., a recess was taken until 2:00 p. m. of the same date.)

301 AFTER RECESS

(The hearing was reconvened at 2:00 o'clock p. m.

Exam. WAY: All right, gentlemen, come to order.

Mr. Jensen.

ELMER JENSEN, having been previously sworn, testified further as follows:

Mr. GORDON: Before resuming your examination with this witness, and in order to accommodate parties that might want the record to look at, I would like at this time to offer in evidence photostatic copy of the freight bill identified by Mr. Jensen this morning.

Exam. WAY: You have got only one copy?

Mr. GORDON: I am sorry, that is all we have now. We can obtain others and have them next week.

Exam. WAY: All right. Have them Monday.

(Exhibit No. 5, witness Jensen, received in evidence.)

Re-direct Examination (Continued).

Q. (By Mr. TAYLOR) What does it cost per 100 pounds for assembling freight for P. C. W. A. at Chicago, Mr. Jensen?

A. That is paid to the Transport Terminal at Chicago.

Q. Your assembling house there, if that is your assembling house?

A. Yes. I believe it is 12 cents per hundred.

302 Exam. WAY: Explain what that is? Is that transportation to Chicago?

The WITNESS: No, sir.

Exam. WAY: Just state so we know on the record. I want to know what the 12 cents is for.

Mr. TAYLOR: We are going to bring that contract into the record a little later on and introduce it into the record Mr. Examiner.

Exam. WAY: That is all right, but when you speak of assembling, you may mean any one of several different things.

Mr. TAYLOR: I am speaking of the warehouse charges there, which are collected by the Transport Terminal, an Illinois corporation.

Q. (By Mr. TAYLOR) Do you own any stock in the Transport Terminal Company, Mr. Jensen?

A. No, sir.

Q. Do you hold any official position with that company?

A. No, sir.

Q. What degree of ownership or interest in the Transport Terminal Company does Mr. G. A. Olson have?

A. He is a stockholder in the Transport Terminal. Exactly how much stock he owns I don't know.

Q. Have you heard approximately the extent of his ownership in that corporation?

A. I believe he owns 50 per cent of it.

303 Q. 50 per cent?

A. That is hearsay. I haven't seen the records.

Q. What are the warehouse and trucking costs per 100 pounds for distribution of freight at Seattle?

A. Seattle, I believe, is 17 cents.

Q. What charge is that?

A. For the unloading of the cars, the delivering of the freight to the warehouse or stores of the members. That is, at Seattle.

Q. The handling charges are collected at the warehouse? The trucking is in addition to that?

A. No, that is in addition to the trucking.

Q. What are the similar charges at Portland?

A. Portland, I believe, is the same.

Q. And Salt Lake City?

A. Salt Lake City, I believe, are also 17 cents.

Q. And Phoenix?

A. I am not sure about Phoenix.

Q. At the time of your visit to Mr. Olson's office last fall, did you ascertain from Mr. Olson, as president on behalf of the Association, what Mr. Olson's expenses were, insofar as the Association's expenses were concerned?

A. No, sir.

Q. Did you inquire of him how many employees he had at that time?

304 A. No, sir.

Q. Did you know how many employees Mr. Olson had at that time?

A. No, sir.

Q. Did you make any inquiry concerning his payroll or expenses?

A. No, sir.

Q. Mr. Olson also conducts at his business address in the Central Building in Los Angeles traffic service for persons or firms other than P. C. W. A., does he not?

A. I don't know.

Q. You do know, don't you, that there are others associated with Mr. Olson at that address and using part of his office space?

A. I didn't know there were others other than his own employees there.

Q. You did not note from the window part of the entrance door that there are other persons quite aside from the Pacific Coast Wholesalers' Association who use part of his office for traffic purposes?

A. I couldn't tell you what is on the door.

Q. Do you know what rent Mr. Olson pays for his space there?

A. No, sir.

Q. I believe you previously testified that you do not know what Mr. Olson's total income was for the years 1942, 1943, and 1944, nor do you know what his expenses were

305 for those years, nor do you know what his net earnings were for those years?

A. I do not.

Q. Insofar as the Association's business was concerned?

A. Or any other business.

Q. Mr. Jensen, have you as president of P. C. W. A. ever executed any contracts on behalf of that Association?

A. By that you mean a written contract?

Q. Yes.

A. No, sir.

Q. I believe that is all, sir. Thank you, Mr. Jensen.

Mr. AMES: Mr. Examiner, I have a question or so, if I may.

Q. (By Mr. AMES) Mr. Jensen, whether you use the regular car forwarders or the P. C. W. A. in handling your particular traffic, you would save money, as compared with the less than carload rate of the railroad, wouldn't you?

A. We would save money rather than if we shipped it l. c. l.?

Q. By rail, yes.

A. Yes, sir.

Q. And is it fair to assume that you used this Association in the beginning because you saved money by using it as compared with the charge of the regular forwarders?

A. The Association was started by Mr. Colyear when he received notice that his rates were to be very materially increased at the time, an expense that would have to be carried by the Colyear Motor Sales Company, and that our prices—we couldn't increase our prices to take care of the increased freight.

306

Q. Then answer my question that you were notified in the first instance by an opportunity to save money as compared with other forwarder charges?

A. Yes, sir.

Q. You knew in the beginning, did you not, approximately how much you could save by using the facilities of P. C. W. A.?

A. (No response.)

Q. That is, you had a general idea of how much you would be likely to save, didn't you?

A. We knew approximately how much per hundred pounds it would be.

Q. That is what I mean, you knew approximately how much per hundred pounds it would be?

A. Yes, sir.

Q. And so long as your saving continues at approximately the same rate per 100 pounds, there wouldn't be much incentive to inquire about how Mr. Olsen was running the business or anybody else was running it so long as your savings were satisfactory?

A. As long as the Association was operating to out satisfaction, and we received monthly remittances for our savings, we were satisfied.

307

Q. As I understand your testimony, you do not know how much Mr. Olson makes a year?

A. Net to himself?

Q. Yes.

A. No, sir.

Q. You don't know even, how much he grosses?

A. No, sir.

Q. You have accumulated in that revolving fund some $30,000 in the course of about a year, I understand?

A. That is from memory only. I believe the record will show what the amount actually is.

Q. Well, if 5 cents a hundred pounds accumulated $30,000, arithmetic tells you that 15 cents would accumulate $90,000?

A. That would be correct arithmetic.

Q. What position do you hold with the company for whom you work?

A. Vice-president.

Q. And you are an accountant?

A. Yes, sir.

Q. Can you conceive of running your business, the Colyear Motor Sales, and making an expenditure of $90,000 a year, with the savings of yourselves, without satisfying yourselves, also, of the details concerning it, that is, if you were making that expenditure to a private business.

308 A. (No response.)

Q. In other words, wouldn't you want to know what was happening for that $90,000, how much somebody else was making out of it?

A. As long as we were getting what we were expecting to get out of it, we would not care how much anybody else makes.

Q. So that is your philosophy? You were not particularly interested in what Mr. Olson makes, as long as the savings continued satisfactory, rather?

A. No, sir.

Q. That is, you are not particularly interested, is that it?

A. We are not interested in what Mr. Olson makes.

Q. That is all.

Mr. GORDON: May I have some questions of this witness brought up on cross examination?

Exam. WAY: Yes.

Re-cross Examination.

Q. (By Mr. GORDON) Mr. Jensen, are you interested in the efficient service in the receipt of your freight from Chicago in the pool cars?

A. Most certainly are.

Q. Has the service that you have received on your shipments since P. C. W. A. has been operating been satisfactory to you?

A. Yes, sir.

309 Q. When you spoke of being satisfied with the savings, so long as the Association was running to your satisfaction, did you have in mind that you were interested in the service you were receiving as well as the savings you received?

A. Well, service would be our first consideration, and we were certainly satisfied with the service and the savings.

Q. Now, in paying for transportation service, can you state whether or not it is common practice to reduce cost to a unit of percentage or so many cents per 100 pounds of freight handled?

A. We handle them by percentages. Cost of freight in percentages, not per unit.

Q. I see, and the fact that the Association pays Mr. Olson a number of cents per 100 pounds for all freight handled for the work that he performs for the Association is not radically different from the payment of a percentage, is it?

A. It works out on the same basis that we pay our salesmen and store managers. They are all on a percentage basis.

Exam. WAY: Percentage of what?

The WITNESS: Salesmen, a percentage of the sales, and store managers on a percentage of the profits.

Q. (By Mr. GORDON) And I take that under this contract or arrangement with Olson to pay him a compensation for the overall job that he does, that was viewed satisfactorily by you as one of the members?

310 A. Yes, sir.

Q. And by the directors for the Association?

A. Yes, sir.

Q. (By Mr. GORDON) In the matter of Transport Terminal Company at Chicago, which handles your consolidation work there, did you have anything to do with the arrangement that was made on behalf of the Association to employ the Transport Terminal Company?

A. (By Mr. JENSEN) I received a telephone call from Chicago. The telephone call was first directed to our late president, Mr. Colyear. He was absent from the office at the time, due to illness. So the call was transferred to me, and it was from Mr. Sorenson, who at that time was loading with us in cars. Mr. Sorenson informed us that our loading arrangements were cancelled.

Q. He was the one that had been making your loading arrangements and carrying on that work for you, wasn't he?

A. That is right.

Q. So he notified you by long distance from Chicago?

A. Yes, sir.

Q. That your loading arrangements were cancelled?

A. Yes, sir.

Q. As to what date with reference to the date of his call?

A. I can't tell you.

Q. Was it some distance in the future?

A. No, just a matter of days.

311 Q. What did you do then?

A. I telephoned Gus Olson—first I went to see Mr. Colyear at his apartment, where he was ill, and asked him what should be done about it, informing him that Mr. Olson was out of town at the time. And he said to get in touch with Olson and tell him immediately to go to Chicago and make any arrangements he could for the loading of his own cars.

So I telephone Mr. Olson in Seattle, where he was at the time, and told him to go to Chicago and make immediate arrangements—whatever arrangements he could make for the loading of our own cars out of Chicago, that Sorenson had cancelled the loading arrangements that he had with him.

Q. Did Mr. Colyear or anyone tell you at that time that Mr. Olson had previously made some tentative arrangements with a man named Davis to set up such operation?

A. Mr. Colyear had instructed Olson to tentatively make some arrangements in Chicago, as he put it, "have an ace in the hole," is the words he used, because, as he put it, he didn't trust Sorenson. I know Sorenson has a man here, and he can go back and tell him. He did not trust Sorenson, because he was afraid of the very thing that happened. He had instructed Olson to—

Exam. WAY: You needn't go into all of that.

Mr. GORDON: I think this is pertinent.

Exam. WAY: Well, I think he might state it in a

312 general way instead of going into details about it.

Mr. GORDON: Well, the question has been raised here whether the Board of Directors or Mr. Olson did this. I think it is very clear that the Board of Directors did it.

Exam. WAY: All right. Go ahead.

The WITNESS: And then Mr. Olson went to Chicago after the telephone call to Seattle, and made arrangements with

the Transport Terminal—is that the correct name—for the loading of our cars out of Chicago.

Q. (By Mr. GORDON) And on his return from his Chicago trip, did he report the matter to the Board of Directors?

A. Yes, he did.

Q. Was any action taken, approving or disapproving his action?

A. The minutes will show that his actions were approved.

Q. This morning, in response to a question, I believe, from the Examiner, as to the purpose and need for the revolving fund, you made some statement about Olson didn't have money enough to finance the current business of the Association. What did you mean by that, that he didn't have money enough of his own or money enough of the Association?

A. Not money enough of his own. The Association did not expect him to put any money of his own into it. It was money owned by the Association.

Q. Do you know whether he was using the Associa-
313 tion's money or someone else's money as working capital?

A. The Association's money.

Q. And he didn't have money enough?

A. Yes, sir.

Q. When you say, "he didn't have money enough," you mean he didn't have Association's money enough?

A. Yes.

Q. Not to his own funds?

A. No.

Q. Do you know of your own knowledge whether he ever used any of his own personal funds to finance this operation?

A. I wouldn't know, because in the beginning I didn't sit in on the meetings of the Association.

Q. With reference to the adoption of the by-laws, Mr. Jensen, you were asked some questions as to who prepared the original draft and who participated in the final drafting of the clauses pertaining to membership and qualifications for membership. Will you state whether or not that was the subject of any discussion at a meeting of the Board of Directors?

A. We had a meeting that lasted, on, approximately three hours, discussing the proposed constitution and by-laws.

Q. Well, with respect to those particular provisions regarding qualifications for membership, was that the subject of any lengthy discussion?

A. Yes, sir.

314 Q. And do you know who proposed the final provisions? Was that proposed by any one individual, or was that the final action of the Board of Directors?

A. It was finally decided by the Board of Directors.

Q. That the final language used in the by-laws is that which the Board of Directors approved?

A. Yes, sir.

Q. That was not the language that was originally set up in the draft which I submitted to the Board, was it?

A. No, sir.

Q. It is true, isn't it, that the keeping of the revolving fund was a subject of considerable discussion with the Board?

A. Yes, sir.

Q. The proceeds of it and the amount that should be set up?

A. Yes, sir.

Q. That is all I have. Thank you.

Exam. WAY: Do you receive any compensation for your services from P. C. W. A.?

The WITNESS: No, sir.

Exam. WAY: Do any other directors or any other officers besides Mr. Olson receive any compensation?

The WITNESS: Mr. Sol Smith.

Exam. WAY: And he is paid as an executive secretary?

The WITNESS: Yes, sir.

Exam. WAY: Now, what benefit do you derive from

315 the Association?

The WITNESS: Personally?

Exam. WAY: For your services acting as president?

The WITNESS: You mean personally?

Exam. WAY: Yes.

The WITNESS: I don't receive any benefits.

Exam. WAY: Well, is it any benefit to you to have this Association handle your traffic, or any benefit to you to have the Association operated?

The WITNESS: Being interested in the concern that employs me, it is.

Mr. GORDON: May I suggest, if the Examiner please, that the witness is thinking of himself, personally, rather than the Colyear Motor Sales Company—if that is clear to him.

Exam. WAY: Then whatever benefit is derived is through your employer?

The WITNESS: Yes, sir.

Exam. WAY: Now, you made some investigation, or looked, I understand, at the records in the office of the Association, and I understood you that all of your investigations down there, all the things you talked about went to the savings or the expenses that were chargeable to your particular firm? Is that right?

The WITNESS: And that of Chanslor & Lyon Company of San Francisco.

316 Exam. WAY: In your investigation did you inquire into the general operation of the Association, that is, the physical handling of the traffic?

The WITNESS: At the time of my visits to their office, I was sent there primarily to look over the matter of the handling of their accounts.

Exam. WAY: And you were not interested in such things as the eligibility of members, but in the matters pertaining to your own business, that is, the business of the firm which employed you?

The WITNESS: Yes, sir.

Exam. WAY: And you made no investigation into any of the physical handling of the matters that were carried on by the Association?

The WITNESS: No, sir, because my instructions didn't include that.

Exam. WAY: Any other questions?

Mr. AMES: I have none.

Exam. WAY: You are excused.

Mr. TAYLOR: Pardon me. He just now mentioned his instructions.

Q. (By Mr. TAYLOR) What instructions are you referring to?

A. I was asked, as I mentioned this morning, I was asked at one time by Mr. Colyear and at another time by Mr. Tom Walsh of Chanslor & Lyon Company to go to that

317 office and do that work.

Q. Well, now, as president of the Association, though, you still received instructions from individual members to perform certain duties for them? Is that what you mean by "instructions"?

A. You might include that in Mr. Walsh's request, that I look after his affairs in Los Angeles, because he is in San Francisco.

Q. Whenever some member asks you to perform some service for him, you do that?

A. Glad to do it.

Q. Thank you.

Exam. WAY: Well, did you do that in your own individual capacity or as president of the Association?

The WITNESS: These investigations I made were made with the exception of the last one, were made before I was president of the organization, and one while Mr. Colyear was president.

Exam. WAY: Well, if one of the members called on you to look after their affairs, would you do it now as president of the Association, or would you do it as an individual?

The WITNESS: I feel it is my duty as president to look after it.

Exam. WAY: You are excused.

(Witness excused.)

318 Mr. TAYLOR: Mr. H. B. Anderson.

H. B. ANDERSON was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. H. B. Anderson, and you are district supervisor of the Bureau of Water Carriers and Freight Haulers of the Interstate Commerce Commission with headquarters in San Francisco?

A. I am.

Q. Were you directed by the Commission to make an inquiry of Pacific Coast Wholesalers' Association's operations and accounts in December, 1943?

A. I was.

Q. And did you make such inquiry?

A. I did.

Q. At what offices?

A. At the office of Mr. G. A. Olson, 325 Central Building, 108 West Sixth Street, and the office of Mr. Sol Smith, executive secretary, 2714 South Hill Street, Los Angeles.

Q. And did you interview Mr. Olson in connection with a request for a report by him for operating receipts and disbursements, and at that time make notes of your conversations?

A. I did.

Q. Please tell what your findings were at that time and what papers were furnished to you by Mr. Olson.

319 A. On December 2, 1943, I called on Mr. G. A. Olson and Mr. G. H. Matthews, his assistant, at which conference Mr. Hugh Gordon, their attorney, was also present. I informed these gentlemen that I was there in response to Mr. Gordon's letter dated October 9, 1943.

I made a request to inspect P. C. W. A.'s payrolls, ledgers, and other records, in which all receipts and disbursements are recorded, reports of activities to the membership, all files pertaining to new members and all operating and financial reports.

Mr. Olson stated that P. C. W. A., as an association, had no payroll and no employees, that he received 13 cents per hundred pounds on all freight shipped, for his services, and that all work performed for P. C. W. A. in his office is done by his employees.

I then asked who pays Mr. Sol Smith, executive secretary, to which Olson replied that he did not know if he was paid.

When I asked if Smith was working gratis, Olson stated that possibly some of the members were paying Smith sufficiently for other work that Smith does for them, to compensate him for the work that he does for P. C. W. A.

Mr. GORDON: May I interrupt, Mr. Anderson? I note you are reading from some document before you. Will you mind stating what the document is?

The WITNESS: It is some notes, a report I made to
320 the Commission as a result of my investigations, as I was instructed, and they have been changed to eliminate the items which have already been covered at this hearing, in order to shorten my report in this hearing.

Mr. GORDON: Well, the document you have is a typewritten document, I notice. Is that the report you made to the Commission, Mr. Anderson?

The WITNESS: With the differences just stated, you would term it a rough draft of the report, and as you will notice it has many changes.

Mr. GORDON: That is what you made up shortly after you completed your investigation?

The WITNESS: Part of it was made at the time as I went along in the investigation.

Q. (By Mr. TAYLOR) You typed the report as of that time?

A. Part of it was typed as and on the dates the investigation was made from pencil notes made at the time.

Q. Those reports from which you are reading were transcribed directly from your pencil notes to this typewritten paper to which you are referring?

A. That is right. I transcribed them myself.

Q. You may proceed, please.

A. I then asked Mr. Olson, "Who has been paying the legal expenses?" And he said that he did not know.

Mr. Olson stated to me that no reports were being
321 made to the membership of the total receipts and disbursements of P. C. W. A. or of the total amount he receives for his services for P. C. W. A., nor has he ever furnished the directors such a report.

In discussing new memberships, Olson advised that all applications were filed with Sol Smith, executive secretary, who presents them to the Board of Directors for approval, whereupon he is advised to contact the prospective member for the purpose of determining whether P. C. W. A. services would be helpful to the applicant, requesting information as to type of commodity shipped, points of origin and destination, *et cetera*.

Olson checks these statements to ascertain whether P. C. W. A. services would be profitable by working up a report to show l. c. l. rates, forwarder rates, and comparative savings, if any, by using P. C. W. A. services.

After the member is accepted as such, Olson then prepares for them shipping and routing instructions to each firm from which materials are purchased on the firm's own letterheads for them to send out with their orders for materials.

Mr. GORDON: Pardon me, Mr. Anderson. These statements that you have just made are in the form of conclusions. Are we to assume that these are the—this is the information that was given to you by someone at Mr. Olson's office, either Mr. Olson or Mr. Matthews or somebody else?

322 The WITNESS: That information was given to me by Mr. Olson. All the information that I am giving here was obtained directly from Mr. Olson, Mr. Matthews, Mr. Smith, or Mr. Gordon, or from their records that they furnished me at the time.

Mr. GORDON: In other words, at the time you wrote this report you wrote it conscientiously as to the best of your knowledge the statements which were made to you by one or other of these gentlemen?

The WITNESS: I tried to give it exactly the way they gave it to me.

Q. (By Mr. TAYLOR) In connection with your present testimony, Mr. Olson was at all times present, was he not, during any conversations that were had with Mr. Matthews?

A. Unless Mr. Olson might have just stepped out of the room for a minute. There may have been a very short period in which he stepped out of the room to answer the phone or some business call, when I was present.

Q. Mr. Olson did clear up any points that Mr. Matthews was not clear on, did he not?

A. At the time I made this investigation, yes, on December 3 Mr. Olson corrected his previous advice to me about paying Sol Smith, executive secretary. He said that he had been paying Smith $200.00 a month since July 1, 1943 out of the funds received from the P. C. W. A. settle-
323 ments retained by him. Also that he paid Smith $150.00 per month for some period of time prior to July 1, 1943.

In reviewing the minutes of the directors' meeting of August 10, 1943, I found that an assessment of 2 cents per hundred pounds against all shipments for the months of July through December, 1943, was authorized to be retained by Olson to create a fund for the retirement of legal and other expenses in connection with the assembling and distribution—rate, that is. These deductions were being made and remitted by Mr. Olson to Sol Smith, executive secretary, who deposited them in a bank account kept in the name of Sol Smith, and from which account he makes payments as instructed by Olson.

In discussing the agreement or contract made by Pacific Coast Wholesalers' Association with the Transport Terminal Company, which contract was entered into on May 20, 1942, and which was approved by the directors August 11, 1942, Mr. Olson said that he owned stock in the Transport Terminal Company and was also a vice-president of this company.

I obtained a copy of this contract at that time from Mr. Olson or Mr. Smith—I am not certain which one furnished me the copy of this contract, but one or the other handed me this, and I submit it herewith as evidence or as an exhibit.

(Handing document to counsel.)

Mr. Taylor: Offered in evidence, a three-page
324 document, purporting to be a copy of a written agreement made and entered into on the 20th day of May, 1942, by and between the Pacific Coast Wholesalers' Association and the Transport Terminal Company of Chicago, which contract is executed for Pacific Coast Wholesalers' Association by G. A. Olson, its traffic manager, and by Transport Terminal Company, by its president, A. D. Davis.

Exam. Way: That will be marked Exhibit No. 6, for identification.

(Exhibit No. 6, witness Anderson, marked for identification.)

The WITNESS: At the same time I asked for and was furnished copies of letters written by Mr. Olson as traffic manager to several of the members transmitting checks to them for the refunds on freight charges previously collected. Also copy of an agreement prepared by Mr. Olson's office and transmitted to the traffic manager of California Shipbuilding Corporation with check for refunds being made to them together with date on each shipment handled during the period which statement shows the government bill of lading number, P. C. W. A. reference number, weight in pounds on each shipment, amount received in dollars, cost to Chicago, cost Chicago to Los Angeles, cost beyond, total cost, and savings.

These statements were obtained for the purpose of showing just how these matters are handled by P. C. W. A.
325 and I offer them now as an exhibit for this record.

(Handing documents to counsel.)

Exam. WAY: Let me see what you have got there.

(Documents handed to Examiner.)

Exam. WAY: Identify them separately, will you please, and get the number of pages.

Mr. TAYLOR: Offer in evidence an exhibit styled "Statement Showing Less than Carload Shipments Consigned to U. S. Maritime Commission, care of California Shipbuilding Corporation at Terminal Island, Los Angeles Harbor, California, which were consolidated at Chicago and forwarded on Pacific Coast Wholesalers' Association manifest during the month of April, 1943."

The exhibit contains 33 numbered sheets and a preface setting forth matters therein and also attached is a Pacific Coast Wholesalers' Association check signed by G. A. Olson, general manager and by G. H. Matthews, traffic manager, check No. 9009, dated May 31, 1943, in the amount of $8,566.71, payable in the Bank of America to the Treasurer of the United States.

Exam. WAY: That will be marked No. 7 for identification.

(Exhibit No. 7, witness Anderson, marked for identification.)

Mr. TAYLOR: I also offer in evidence a statement consisting of 27 pages, showing less than carload shipments
326 consigned to the U. S. Maritime Commission, care of California Shipbuilding Corporation, Terminal Island, Los Angeles Harbor, California, which were consolidated at Chicago and forwarded on a Pacific Coast Wholesalers' Association manifest during the month of August, 1943, and which exhibit also contains three letters in duplicate on the letterhead of Pacific Coast Wholesalers'

Association by its traffic manager, G. A. Olson, reports dated June 29, 1942, addressed to Colyear Motor Sales Company, Los Angeles, Chanslor & Lyon, San Francisco, Borg Warner Service Parts Company, Chicago, in which all shipments by those concerns to points on the west coast served by P. C. W. A. are represented as to weight and amounts.

Exam. WAY: I think that is sufficient. Mark that No. 8 for identification.

(Exhibit No. 8, witness Anderson, marked for identification.)

Exam. WAY: All right. Proceed.

The WITNESS: During this investigation I asked for and was furnished a statement showing the tonnage in pounds to the various break bulk points by months for the year ended May, 1943.

This statement also shows the total for this year by break bulk points and for all points. And the statement of savings for the same period by break bulk points, which also shows the total savings for the year.

327 And I wish to offer these two sheets as an exhibit.

Exam. WAY: They will be marked Exhibit No. 9 for identification.

(Exhibit No. 9, witness Anderson, marked for identification.)

The WITNESS: While discussing the operation and minutes of meetings held by directors and any minutes of meetings of the members with Mr. Olson on December 14, 1943, Mr. Olson stated that the Association was incorporated without the knowledge or consent of the members; therefore, there were no minutes of meetings of the membership.

Q. (By Mr. TAYLOR) And did you make request for access to and review all the accounting records, which have the total receipts and expenditures in connection with P. C. W. A. expenses?

A. I did and they were furnished.

Exam. WAY: Just a minnte.

(Question read.)

The WITNESS: Mr. Olson stated that these were his personal employees, and he didn't consider them a part of P. C. W. A. records.

Mr. GORDON: You are speaking of the payrolls records now?

The WITNESS: Speaking of the payroll records of
328 the employees engaged by Mr. Olson in the operation of P. C. W. A. business.

Q. (By Mr. TAYLOR) You made specific request of Mr. Olson to supply you at that time in connection with instructions you had received from the Interstate Commerce Commission all of Mr. Olson's records showing receipts and disbursements in connection with the Pacific Coast Wholesalers' Association? Is that right?

A. I did.

Q. And Mr. Olson declined to show you those records?

A. They were not furnished, and, as originally stated, he indicated that he did not consider them a part of P. C. W. A. records, and, therefore, the Commission was not entitled to see them.

Mr. GORDON: May I inquire, Mr. Anderson, at that point, that the statement you just made about what Mr. Olson said about the records is something that is written in your report, or are you speaking from independent recollection?

The WITNESS: I am speaking from notes here and also from the conversation I had with Mr. Olson at the time.

Q. (By Mr. TAYLOR) And, as a matter of fact, didn't you just last week have another conversation with Mr. Olson and advise Mr. Olson that you expected that he would produce at this hearing under subpoena these various same records which had been previously declined to you?

329 A. Not with Mr. Olson. I called on Mr. Hugh Gordon, their attorney. As I understand, he did represent them in this matter, and explained to Mr. Gordon exactly all the records we would expect to be furnished under this subpoena, and that I was giving him this information so that they would be present at this hearing.

Q. Now, going back to the December, 1943, official entry at Mr. Olson's office, did Mr. Olson give you any reason other than it was his personal business and why he should decline you access to the records of the Pacific Coast Wholesalers' Association?

A. Nothing only he felt it was his personal business and not a part of P. C. W. A., was the understanding I had from Mr. Olson's replies on information to me at that time.

Mr. GORDON: Mr. Taylor, just for the purpose of clarity, but when you refer to the records of P. C. W. A. that Mr. Olson declined to furnish, you are referring, are you not, to these records of his office expenses and not to the records of P. C. W. A., showing total tonnage, and the total freight account, transport station cost, and savings, and things of that kind?

Mr. TAYLOR: We are referring to all records pertaining to income by Mr. Olson or disbursements by Mr. Olson, and

net profits to Mr. Olson as a result of the operation
330 of the Pacific Wholesalers' Association, of which he is general manager.

Mr. GORDON: Are we to understand then, that the witness is testifying that all of that was declined?

Mr. TAYLOR: In order to obtain that information, of course, Mr. Gordon, it was necessary for the Commission to receive all records. That included the cancelled checks, which Mr. Olson wrote, of course. It included all of his check stubs. It included all books of accounting or ledgers, wherein was recorded his receipts as general manager, and all his disbursements and all of his expenses incidental to P. C. W. A. operations.

That would include expenses of his office, or any part of his office, which should properly be attributable to the Association's business.

That would include the payroll accounts of Mr. Olson, covering employees who devoted their time to P. C. W. A. operations.

That would include any and all incidental expenses, legal, insurance, or other expenses, of course, incidental to the Association's business.

Those are the accounts and records which I understand Mr. Anderson requested of Mr. Olson at that time.

331 Mr. GORDON: Well, I didn't want to argue the point. I just wondered if I couldn't make it clear that certain things were asked for and were not furnished, and certain things were asked for and were furnished.

The WITNESS: That is right.

Q. (By Mr. TAYLOR) Will you proceed, Mr. Anderson?

A. On December 13 I called on Mr. Sol Smith, Executive Secretary, at his office, and he informed me that he was a professional executive secretary and had been such since 1926, and that at that time he represented eight additional organizations in addition to P. C. W. A.

He told me that he did not receive any compensation from P. C. W. A. except $200 per month salary paid him by G. A. Olson, and that he maintains the expense of his office from this salary and from funds received from the other associations he represents.

Mr. Smith also told me that he organized P. C. W. A in 1935 at the request of Mr. C. C. Colyear, president of the Colyear Motor Sales Company.

In reply to questions concerning what funds he handles for P. C. W. A., Mr. Smith advised that he keeps two bank

accounts in which he deposits initiation or membership fees, profits on shipments handled for non-members, and other special assessments collected by G. A. Olson.

Mr. Smith also carried on bank account in the
332 name of Pacific Coast Wholesalers' Association with the Security-First National Bank, in which all funds are first deposited. Immediately after these funds are deposited, a check is drawn to Sol Smith, and the funds transferred to another bank account carried under the name of Sol Smith, with the Security-First National Bank.

In reply to my inquiry as to why funds were deposited in the name of P. C. W. A., and promptly transferred to the account in the name of Sol Smith, he first said that he did not know. He then explained that perhaps this was started because the bank at one time declined to accept checks made payable to P. C. W. A. for direct deposit in the account of Sol Smith.

A review of the bank statements covering these accounts for the period from January, 1940, through December 1, 1943, showed that more than half of the funds were paid to G. A. Olson.

In order to show this clearly, the assistance of Mr. Smith, a letter was prepared showing the debits made in the bank account carried with the Security-First National Bank during this period, and a statement of the credits made to the bank account carried in the name of Sol Smith for this period. This statement consists of three sheets, and I submit it herewith as an exhibit for this record.

Exam WAY: Mark it for identification Exhibit No. 10.

(Exhibit 10, Witness Anderson, marked for identification.)

333 Exam. WAY: Proceed.

The WITNESS: In response to questions, Mr. Smith stated that Mr. Olson had never submitted itemized statements of his traveling expenses although hundreds of dollars have been paid Olson for this purpose.

Smith also asserted that Olson has never submitted a financial report, and he, Smith, did not know what profit Olson makes as general manager of the Association.

In connection with Mr. Olson's compensation, Smith stated that the original amount of 10 cents per hundred pounds was negotiated between Olson and C. C. Colvear, and was never submitted to the membership or the board of directors for approval, and, further, that when Olson asked for an increase of three cents per hundred pounds

the board of directors approved this on August 10, 1943, with only three members of the board present, or without requiring Olson to furnish documentary evidence to support and justify the increase.

Q. (By Mr. TAYLOR) And have you submitted, Mr. Anderson, all of the exhibits which were offered you by Mr. Olson and by Mr. Smith at that first inquiry in December, 1943?

A. All except one or two statements of manifests, showing shipments in certain cars, which were obtained to show how the freight is handled—routed and billed, but since they did not include shipments to all break bulk points on arriving in Los Angeles, a few days ago I called Mr.
334 Olson's office and asked Mr. Matthews if he would not supply information on certain cars that I would select, which he readily agreed to do. And this was done in order to avoid the necessity of transferring so many of these records from their office to this hearing, in response to the subpoena.

Mr. Matthews of Mr. Olson's office has furnished me with copies of manifests of seven different shipments, which contained freight designated to all of their break bulk points, and which manifests are supported with a copy of the railroad bill of lading covering the car from Chicago to destination, with copies of P. C. W. A. freight bills covering certain shipments in the car, and a copy of certain freight bills for shipments from origin to the concentration point, Chicago, or from the break bulk point to destination, and a savings statement, showing the name of each member that had freight in the car with the total tonnage of freight for each member.

This statement also shows the freight paid by the member, advances on such freight, total freight charges, and the savings to the member on this freight.

Mr. AMES: May I inquire at this point: Do those statements contain the railroad freight bills?

The WITNESS: A few, just for purposes of showing how the freight is actually handled and billed.

Mr. TAYLOR: Mr. Ames, we shall presently introduce those manifests and other papers into evidence, and
335 as a matter of fact if Mr. Anderson has now concluded, I will ask him to identify those seven carload shipments further by giving for the record the car initials and numbers, the dates of shipment from Chicago, and the destination of each carload shipment.

(Discussion off the record.)

(Short recess.)

Mr. TAYLOR: May the record show that Mr. George Horton, traffic manager, California Shipbuilding Corporation, Terminal Island, who is present at this hearing under subpoena served by the Commission, is hereby excused from that subpoena?

Exam. WAY: The record may show that. Proceed.

(The last statement by Mr. Taylor before the recess was read by the reporter.)

The WITNESS: Manifest No. CPO 214 of three sheets dated June 3, 1944, covering car A. T. & S. F., 10983, from Chicago to Portland, Oregon.

(Discussion off the record.)

The WITNESS: Manifest No. CSP 154 of two pages, dated June 3, 1944, car A. T. & S. F. 10983 from Chicago to Spokane, Washington.

Manifest No. CSESL 343, two pages, dated June 27, 1944, covering car S. P. 64655, from Chicago to Salt Lake City.

Manifest No. CYK 50, one page, dated June 27, 1944, car S. P. 64655, from Chicago to Yakima, Washington.

Manifest No. CSE 567, four pages, dated June 27,
336 1944, car S. P. 64655, from Chicago to Seattle.

Manifest No. CSEPO 216, one page, dated June 7, 1944, covering car P. M. 71119, from Chicago to Portland, Oregon.

Manifest No. CSE 556, three sheets, dated June 7, 1944, car P. M. 71119, from Chicago to Seattle, Washington.

Manifest No. CSF 515, one page, dated July 17, 1944, car S. F. R. D. 24248, from Chicago to San Francisco.

Manifest No. CTI 1045, two pages, dated July 17, 1944, car P. F. E. 98653, from Chicago to Terminal Island, California.

Manifest No. CLA 984, two pages, dated August 17, 1944, car S. F. R. D. 24807 and 34630, from Chicago to Los Angeles.

Manifest No. CSF 541, two pages, August 17, 1944, car S. F. R. D. 19516, from Chicago to San Francisco.

Manifest No. CLASL 356, one page, dated July 18, 1944, car S. O. U. 40104, from Chicago to Salt Lake City.

Manifest No. C. T. I. 1047, one page, dated July 18, 1944, car S. O. U. 40104, from Chicago to Los Angeles.

Manifest No. C. L. A. 946, one page, dated July 18, 1944, car S. O. U. 40104, Chicago to Los Angeles.

Manifest C. P. X. 173, one page, dated September 12, 1944, car P. E. X. X. 59385, Chicago to Phoenix, Arizona.

Manifest No. C. T. I. 1125, one page, dated September 12, 1944, car P. E. N. N. 59385, from Chicago to Terminal Island.

Exam. WAY: All those documents you have referred to are copies of manifests of the Pacific Coast Whole-
337 salers' Association?

The WITNESS: That is right, and are supported with a copy of the railroad bill of lading, covering each car, with copies of P. C. W. A. freight bills, covering certain shipments in the car.

Exam. WAY: In all of them?

The WITNESS: Only representative shipments. But these 11 also include copies of any rail or motor carrier freight bills, covering the same shipments from point of origin to point of consolidation, or from the break bulk point to destination.

Exam. WAY: Now, let us see: You haven't got all of the shipments in the car, but the shipments that you do have the papers for, you have all of the papers for all of the movements from the point of origin to the destination? Is that what you mean?

The WITNESS: On certain of the bills, to show the representative movement and how they are handled all the way through.

Also the paid railroad freight bills covering three of the cars from Chicago to break bulk point.

Exam. WAY: That is the original paid freight bill?

The WITNESS: I have here the original paid freight bill, but—Mr. Matthews asked that he be permitted to get these back, and make photostatic copies—

338 Mr. MATTHEWS: I will correct that. I will leave the originals go in the record.

The WITNESS: You will leave the originals go in the record?

Mr. MATTHEWS: Yes.

The WITNESS: Then we have the original paid freight bills.

Mr. AMES: What cars are those you have the original freight bills on, if the Examiner please?

The WITNESS: Covering car A. T. S. F. 10983, covering weigh bill dated June 6, 1944, weigh bill No. 134974.

Exam. WAY: That is sufficient.

Mr. AMES: I think the car number will be sufficient for my purpose.

The WITNESS: Car A. T. & S. F. 10983. Also have the original paid freight bill covering car No. 16888, weigh bill

from Chicago, Illinois, October 21, 1944. This freight bill does not show the car initial under the space provided.

Mr. AMES: The railroad bill of lading ought to show it.

The WITNESS: This freight bill covering shipment from Chicago on August 21, 1944, No. 3505, shows under the space provided for the car initial and number, No. 16888. This apparently is an error, as it covers cars S. F. R. D. 19516, S. F. R. D. 24807, and S. F. R. D. 34630, which is covered by bill of lading of the Baltimore & Ohio Railroad Company, dated Chicago, Illinois, August 17, 1944, as the
339 description of merchandise and weight and rate correspond.

Mr. AMES: Will the paid railroad freight bills covering movement from Chicago to break bulk point, will they be supplied before those exhibits are introduced in evidence?

The WITNESS: I have the paid freight bill on one more of these cars which is freight bill No. 6185, covering car S. O. U. 40104, weigh bill from Chicago, Illinois, July 21, 1944.

The total charges of $757.18.

This covers the paid freight bills in three complete cars, and it is all I asked for when requesting this information, as I thought in order to get a complete picture of the actual handling of this freight they would be necessary.

Exam. WAY: Now, will you see that they are all stapled together securely when they are offered?

The WITNESS: These weigh bills, freight bills, bills of lading, and statements of savings to the members consist of 291 sheets, and I herewith offer these 291 sheets as an exhibit.

Exam. WAY: They have to be attached together in some fashion.

The WITNESS: I will see that they are.

Exam. WAY: Before they are offered.

The WITNESS: Yes, sir.

Q. (By Mr. TAYLOR) At this point, before they are
340 offered in evidence, may I ask if all the manifests in connection with these shipments are attached to each individual car file, or whether these are simply representative manifests?

A. These are the manifests covering these cars here, the ones that have just been referred to.

Q. And are they all the manifests in connection with each car?

A. They are, and you will recall I had manifests, two and three manifests on some particular cars.

Mr. GORDON: These documents you have just described, Mr. Anderson, are documents requested by you from Mr. G. H. Matthews at the office of G. A. Olson, are they?

The WITNESS: They are and were furnished to me by Mr. Matthews.

Mr. GORDON: And were selected by you as typical and representative of such shipments as you desired to show?

The WITNESS: They are the cars I selected to show typical movements to various break bulk points to which P. C. W. A. makes shipment.

Mr. GORDON: No objection to their being received in evidence.

(Exhibit No. 11, witness Anderson, received in evidence.)

Exam. WAY: Proceed.

The WITNESS: While conferring with Mr. Matthews during the past few days, I also asked him to furnish me
341 the total tonnage, the total revenue, total expenses, and total savings of P. C. W. A. for the years 1942, 1943 and 1944.

This information was furnished and is as follows:

Total tonnage, 1942: 19,650,654 pounds.
1943: 44,070,867 pounds.
1944: 42,018,232 pounds.

Total revenue:
1942: $591,198.91.
1943: $1,349,150.73.
1944: $1,342,880.49.

Total expenses:
1942: $527,388.95.
1943: $1,181,721.84.
1944: $1,184,997.29.

Total savings:
1942: $60,522.15.
1943: $157,125.28.
1944: $136,138.32.

This latter figure of savings for 1944 is not complete in that it does not include the savings due California Shipbuilding or U. S. Maritime Corporation for December, 1944.

It was explained this could not be furnished because the accounts had not been completed for December, 1944, but that it would approximate $5,000.

Exam. WAY: What are the savings? You mean
342 to say that is a profit in the Pacific Coast Wholesalers' Association?

The WITNESS: The savings, as I understand them, and as was explained to me, represent the amounts that were re-

turned to the members, which is the difference between the amount originally charged to the members for the freight and other charges—

Exam. WAY: Well, is it the difference between revenue and expense that you have just given me?

The WITNESS: No. There are other items that go in there before you get the difference between the revenue and expense. They do not exactly check out. There are some other small items in there and also insurance is taken out of that revenue figure, but other than the insurance premiums paid there are other small items which would have taken some time to have gotten out of the records, and I did not take time to do that at that time, as I did not have sufficient time for it.

Mr. GORDON: May I inquire whether it is the intention of the Commission to put Mr. Matthews on the stand to explain any of this data?

Mr. TAYLOR: Mr. Matthews is under subpoena, and we expect to use Mr. Matthews.

Mr. GORDON: That was in response to the question put by the Examiner, I think. Mr. Matthews can clear that up.

Exam. WAY: Yes, I want a clear explanation of all these figures. Proceed.

343 The WITNESS: In the investigation made and in my examination of the records it shows that the following amounts are now being withheld from the freight charges originally charged to the members on freight handling for them:

12 cents to cover the handling at Chicago, of classifying and loading.

5 cents per hundred pounds for unloading at destination.

10 and 12 cents per hundred pounds for delivery of the freight at destination. Some points are charged 10 cents, while others the cost is 12 cents.

For insurance 1⅛ cents.

For billing and mailing notices of arrival, 1¼ cents.

For administration expense and management costs, 13 cents.

And an additional assessment of 1 cent for legal expenses.

The 13 cents is administration and management costs plus 2¼ cents for billing and mailing notices, plus 1⅛ cents for insurance premiums, plus 1 cent for legal fees, and is paid to Mr. G. A. Olson, general manager, who handles these funds from the time they are paid to him out of the freight fund, and for which we have not yet received

any information as to what expenses are paid with them since the date the Association was incorporated or prior thereto.

Exam. WAY: Well, have you summarized that sufficiently to be able to tell in dollars and cents how much money was paid to Mr. Olson during the respective periods?

344 The WITNESS: I have not got the exact figure, but I will give it to you Monday morning before this hearing closes.

Q. (By Mr. TAYLOR) Mr. Anderson, did you in January, 1945, interview members of the Pacific Coast Wholesalers' Association in Seattle and Salt Lake City?

A. I did.

Q. And did you during the course of your interviews make notes of your conversations?

A. I did.

Q. Referring to your notes of what was said at each interview—

Mr. GORDON: Just a moment. That is objected to as incompetent, irrelevant and immaterial and hearsay testimony, purporting to recite statements made by members who are not respondents in this proceeding, and who, if called as witnesses, would be subject to cross examination, such explanation as they desire to make.

Exam. WAY: The objection is overruled. We will receive it.

Mr. GORDON: No proper foundation laid for any impeachment. I think the record should show that we claim a right to be confronted with any witnesses whose statements are about to be made by this witness now on the stand as hearsay.

Exam. WAY: This testimony that you are about to give now is a summary of the investigations at these respective places?

345 The WITNESS: They are.

Exam. WAY: And what was told to you?

The WITNESS: By the officials of these companies, and the notes—I have in penciled notes made at the time the questions were asked where I simply recorded replies to questions. I asked them about their knowledge of the operations of the P. C. W. A.

Mr. GORDON: I think the Examiner will readily recognize the unfairness of testimony of that kind to the present respondents, that out of their presence the representative of the Commission has made these inquiries, asked questions which we did not hear and don't know about, and we

have had no opportunity whatever to ask or to check the accuracy of the statements. The persons that made those statements have no opportunity to know now whether or not their statements to him are correctly remembered and recorded and reported. This shows the vice of hearsay testimony, in my judgment, in the worst form, and, as I submit, in a form that is extremely unfair to the respondents in this proceeding.

Mr. TAYLOR: I should like to make reply to Mr. Gordon for the record at this time, Mr. Examiner.

Exam. WAY: All right.

Mr. TAYLOR: The order of the Commission was directed to the Pacific Coast Wholesalers' Association as a respondent. We take the position that the rule as to
346 hearsay evidence is not here invoked for the reason that each member of the corporate Association is presumed to be present here at this hearing.

Mr. GORDON: Well, now, the evidence already discloses that the Pacific Coast Wholesalers' Association is a corporation, and by the rule, such as announced by counsel, it would mean that if any corporation was made a respondent, the Southern Pacific Railroad, for instance, every stockholder of the Southern Pacific Railroad would be thereby deemed to be a respondent, and any statement made by any stockholder at any time out of the presence of the court would be proper evidence to be received, notwithstanding it was said to some other person and then repeated or undertaken to be repeated in the court room. I fail to see the logic of that for any suggestions for receiving hearsay evidence.

Mr. TAYLOR: We did not subpoena any out-of-town members of the Association with the exception of Mr. Horton, in order to relieve those members of the inconvenience and expense of the trip to Los Angeles, and if Mr. Gordon wishes he may have those members present here Monday morning, perhaps, if they can arrange transportation, which would undoubtedly be difficult at this time. But we do contend that the rule as to hearsay evidence is not invoked in this hearing at this point in connection with Mr. Anderson's testimony. He is testifying from the notes which he made at the time of his interviews
347 with those members.

Mr. GORDON: I don't question Mr. Anderson's good faith in his effort to honestly repeat the things that were said to him, but we all know how statements may be

made which perhaps are not what the person making them intended to say. He might wish to make some explanation. He might have given a wrong impression. It is not his honest, true convictions and statements.

Exam. WAY: That is pretty much the character of the testimony that was produced in this case all the way through. You will recall during the testimony yesterday that it was very much to the effect of what somebody else said or what the directors did or that what was in the minutes or that there were certain meetings of the directors, and so forth. I am disposed to proceed along to find out what Mr. Anderson would say about this, and you may renew your objection.

Mr. GORDON: May it be understood that my objection does go to all the hearsay testimony which he is about to relate? Thank you.

Exam. WAY: I understand.

The WITNESS: Well, in Seattle, Washington, on January 20, 1945, I called at the office of Pacific Marine Supply Company, 1223 Western Avenue, and in conversation with Mr. L. F. Duvall, assistant secretary, and Mr. W. J. Angus, assistant purchasing agent, I received the following
348 in response to questions from them:

Mr. Duvall stated that Mr. G. A. Olson called on him and told him that P. C. W. A was increasing its membership and solicited their business. He said that Mr. Olson at the time explained how P. C. W. A. operated and that it was a non-profit association.

He stated that he had never attended a meeting of the members of the Association, had never been furnished with any information on the income, cost of operation, expenses, number of employees, or other similar information, that he did not know how much G. A. Olson was paid or received or how much Sol Smith was paid or received for their services, or how much time they devoted to the business of P. C. W. A. He did not know how much was being deducted from the freight charges of his company for management and operating costs, or who received or retained the receipts, or retained any difference between the amount deducted and the actual cost of the operation. Neither did he know for what purpose the membership fees are used.

He stated that he joined to get the savings promised on freight charges, and that he was not otherwise interested in the operation.

Exam. WAY: Now, that character of testimony is precisely the same as what other witnesses have testified here.

Mr. GORDON: I submit that does not relieve it of
349 its inadmissible character, if the Examiner please.

Exam. WAY: All right. Your objection is noted. Proceed.

The WITNESS: In Salt Lake City on January 15, 1945, I called on the Salt Lake Hardware Company, 105 North Third West Street, and in a conference with H. A. Ellsworth, traffic manager, I received the following information in response to my questions:

That they have been a member of P. C. W. A. since April, 1942, had paid a membership fee of $200, and that they hold Certificate of Membership No. 20, dated March 15, 1944, which was issued to him after P. C. W. A. was incorporated.

Mr. Ellsworth stated that he had just returned from a meeting of the membership in Los Angeles, which was held on January 10, 1945, and that he sat in a directors' meeting of P. C. W. A. after the membership meeting.

He said that this was the only membership meeting he had ever attended, but that at this meeting he represented W. H. Bintz & Company, the Lang Company, the Mine and Smelter Supply Company, and Strevell-Paterson Hardware Company by proxy.

Mr. Ellsworth could not tell me anything about the costs of operating P. C. W. A. and said that he had never been furnished with any income, operating, or financial statements showing the status of the corporation. He did not know how much G. A. Olson, general manager, or Sol Smith,
general secretary, was paid, how many members
350 P. C. W. A. has, what office rent, if any, they pay, how much time Mr. Olson or Mr. Smith devoted to the business, what the membership fees are used for, but he did say that he thought they were used to pay the salaries of employees, and that he had never investigated to determine if any of the charges being made appeared proper or just.

When I first called on Mr. Ellsworth, he said he represented P. C. W. A. in Salt Lake and that he was thoroughly familiar with the operations, and that if I had called on him first he could have saved me a lot of work of calling on the other members. After I had left, he said he guessed he did not know as much about the operation as he thought.

Mr. Ellsworth is also secretary of the Utah Citizens' Rate Association of Salt Lake City, which has about 50

members, and that he was engaged entirely in this work prior to the time he accepted his present position of traffic manager for the Salt Lake Hardware Company on October 1, 1941.

He now carries on the work of the Utah Citizens' Rate Association—

Exam. WAY: I don't think we need to go into that.

The WITNESS: Mr. Ellsworth stated that while he was secretary of the Utah Citizens' Rate Association the freight forwarders served notice on their members that they were no longer going to give them the discount they had been giving them on their rates, and, as a result of this,
351 he began looking around to find out how the freight of the members of this association could be handled without having to pay the regular LCL rail and motor rates, and that in doing this he called on the San Francisco Machinery Dealers' Association and the Los Angeles Machinery Dealers' Association to see if arrangements could be made to joint load with them.

Exam. WAY: Now, I think you are getting away from the Pacific Coast Wholesalers' Association, getting onto something else.

The WITNESS: I was going to bring in here, Mr. Examiner please, Mr. Ellsworth's statement as to why he contacted P. C. W. A.

Exam. WAY: All right.

The WITNESS: This could not be arranged, but in doing this he heard of P .C. W. A. and went to see Mr. G. A. Olson and arranged for him to come to Salt Lake to explain his services to the large shippers there.

He said that Mr. Olson did this, and, as a result, five of the large shippers in Salt Lake joined P. C. W. A. in 1942.

While in Salt Lake City, on January 15, 1945, I called on the Mine and Smelter Supply Company, 121 West Second Street, and in conference with Mr. R. W. Butler, manager, he said that he first heard of P. C. W. A. from Mr. H. A. Ellsworth, who, he understood, represents them in Salt Lake.

He said that he had never attended a meeting of
352 the membership, does not know how many members P. C. W. A. has, how much G. A. Olson or Sol Smith or any other employee is paid or receives, what office space is rented, if any, how much is deducted from freight charges paid for operating and managing P. C. W. A., and he had never been furnished with any information on the cost of

operating the Association, that he had never seen an income or operating statement of the Association.

He said that his principal interest in the P. C. W. A. was to obtain the savings promised on freight charges, and that otherwise his company was not interested.

While in Salt Lake on January 15, 1945, I called on the Strevell-Paterson Hardware Company, 126 South West Temple Street, and in conversation with Mr. G. A. Rogers, president and general manager, and Mr. E. L. Evans, traffic manager, I was advised that they had never been furnished with any information on the income or expenses of the Association, that they did not know how many employees the Association had, that they did not know how much G. A. Olson or Sol Smith were paid.

They did say that the service of P. C. W. A. was much better than they had formerly gotten from the regular forwarders, also that P. C. W. A. did not handle all of their LCL freight, that some of it was now being handled by the regular forwarders.

353 In explanation of this, they advised that they were only shipping over P. C. W. A. services that freight which they had been advised could be handled by P. C. W. A. at a saving to them in freight charges.

They stated that they had never attended a meeting of the Association and did not know why the Association was incorporated in 1943.

While in Salt Lake City on January 15, 1945, I called on the Galigher Company, 48 South Second East Street, and in conference with Mr. W. H. Curry, vice-president, and Mr. D. D. Kelly, secretary and treasurer, I was advised that their former traffic manager and purchasing agent by the name of Tregeagle, was approached by H. A. Ellsworth to join P. C. W. A., and that Tregeagle joined to obtain the savings offered on the freight charges.

Mr. Kelly said that they had never attended a meeting of the membership of P. C. W. A., and except for the time G. A. Olson was in Salt Lake had never attended a meeting of the members in Salt Lake.

He said that it was his understanding that H. A. Ellsworth represents P. C. W. A. in Salt Lake.

Kelly stated that he had never been furnished with any information about the cost of operating P. C. W. A. and did not know how much G. A. Olson, Sol Smith, or any other employee is paid or receives from the operation, did not

know how much time Olson or Smith devotes to the
354 business, what the membership dues are used for, how many members they have, and that their principal interest was to obtain the savings promised on freight charges.

They did say that the service was very good and that even though there were no savings in freight charges, they would continue their membership, in order to avail themselves of the good service.

While in Salt Lake City on January 16, 1945, I called on the Lang Company, 261 South First Street West, and conferred with Mr. H. A. Christiansen, comptroller, and O. W. Kasteler, purchasing agent.

And on the same day I called on W. H. Bintz Company, 433 West Third South Street, and conferred with Warren R. Tyler, treasurer and purchasing agent.

And while in Seattle, Washington, on January 19, 1945, I called on the Associated Shipbuilders, 2929 Southwest 16th Avenue, and conferred with Mr. E. W. Jagger, procurement manager.

And while in Seattle on January 20, 1945, I called on the Northern Commercial Company, Coleman Building, and conferred with Mr. R. E. Hall, traffic manager.

In calling upon these gentlemen, I explained that I was seeking information about the service which they obtained from P. C. W. A. and their membership in this Association.

I asked them substantially the same questions
355 which I asked the others, which I have just detailed, and none of them had ever seen an income or operating statement of the operation, had never attended a meeting of the membership, did not know how much was paid any employee of the Association or how many employees it had, if any, and all of them stated that their principal reason for joining the Association was to obtain the savings promised on freight charges.

Q. (By Mr. TAYLOR) That is all, Mr. Anderson.

Mr. TAYLOR: All our exhibits are offered in evidence.

Exam. WAY: Without objection they are received.

(Exhibits Nos. 6, 7, 8, 9, and 10, witness Anderson, received in evidence.)

(Witness excused.)

Exam. WAY: We will recess until 9:00 o'clock Monday.

(At 4:55 o'clock p. m., an adjournment was taken until Monday, February 5, 1945, at 9:00 o'clock a. m.)

356 Before the Interstate Commerce Commission

Ex Parte No. 160

In the Matter of

PACIFIC COAST WHOLESALERS' ASSOCIATION,
INVESTIGATION OF STATUS

Room 229 Federal Building
Los Angeles, California
February 5, 1945 9:00 A. M.

Before: L. WAY, *Examiner.*

Met pursuant to adjournment.

APPEARANCES:

(As heretofore noted.)

357 PROCEEDINGS

Exam. WAY: All the parties are here. We will proceed with the case.

Mr. Jensen, I will have some more questions to propound to you before this hearing is over, so I hope that you will be here.

Mr. JENSEN: I will be here.

H. B. ANDERSON, previously sworn, was recalled and testified as follows:

Direct Examination (continued).

Q. (By Mr. TAYLOR) Mr. Anderson, did you at the office of Mr. G. A. Olson, obtain figures showing the gross allowance in money based on the 15¼ cents per hundred pounds retained by Mr. Olson for his services as general manager during the years 1942, 1943, and 1944?

A. I received the information as to the total tonnage, total revenue, total expense, total savings, total insurance premiums paid for the years 1942, 1943, and 1944, and the amount paid to G. A. Olson from the freight account for administration and billing cost for the years 1943 and 1944, and also the amount paid to Sol Smith during 1944.

Q. Will you give us a report on those figures obtained?

A. I have already stated this information except as to the amount paid to G. A. Olson and to Sol Smith from the freight account kept by the general manager's office.

358 Q. Do you refer as a freight account to the total amount retained by Mr. Olson on the 15¼ cents per hundred pounds deduction?

A. I do.

Q. Will you give the total retained by him from that amount of deduction for the year 1942, based upon your calculation of the total tonnage handled?

A. I have not checked the figure for 1942 with Mr. Olson's office, but if you will multiply the tonnage for the year 1942 by 15¼ cents, it will give you an amount, $29,967.25. I assume that was the amount that was paid to Mr. Olson during 1942.

During 1943 he was paid from this fund $66,110.92.

Q. That was for the year—

A. For the year 1943. And for the year 1944, $61,677.74. And during 1944 Sol Smith, as executive secretary, was paid $2,400.

Mr. GORDON: Will you give us that first figure again, the amount paid Olson for 1944?

The WITNESS: $61,677.74. It should be kept in mind that this does not represent the total amount paid to Mr. G. A. Olson, as there were several hundred dollars paid to Mr. Olson during 1942, 1943, and 1944, from the funds kept by Sol Smith, executive secretary, for expenses incurred in connection with the operation of P. C. W. A. as the
359 records so show. I have not been able to determine exactly how much this amount was.

Mr. AMES: When you added it, $3,600, and I added it, $3,800.

The WITNESS: That is a part of it.

Q. (By Mr. TAYLOR) Did you in the office of Mr. G. A. Olson obtain access to and examine Mr. Olson's disbursements as his expenses as general manager of Pacific Coast Wholesalers' Association during the years 1942, 1943, and 1944?

A. No.

Q. Have you had an opportunity to examine the records produced at the hearing by Mr. G. A. Olson under subpoena *duces tecum*?

A. I have.

Q. When did you make such an examination?

A. Yesterday, which is the only opportunity I have had to do so.

Q. And you did not find among the records produced by Mr. Olson, the accounting records, including ledgers, check book stubs or canceled checks, which would be evidence of disbursement for expenses incurred by his office as general manager of the Association?

A. I did not.

Q. Have you had an opportunity at this hearing to examine the records which were produced by Mr. Sol Smith under service of a subpoena?

360 A. I have. Yesterday.

Q. And did you examine those records?

A. I did.

Q. And did those records disclose, as a result of your examination, the disbursements made by Mr. Sol Smith from P. C. W. A. accounts maintained by him covering expenses for the years 1942, 1943, and 1944?

A. I was unable to locate any ledgers in which this account was carried, and did not find the bank balances or statements for the years 1944 and down to date, for 1945, but upon inquiry of Mr. Smith this morning, he referred me to memorandums which were in the records, which show the disbursements to P. C. W. A. bank account and receipts in A & D fund.

Exam. WAY: What is the A & D fund?

The WITNESS: I do not know. That is just what this sheet is headed under.

Mr. TAYLOR: Assembly and distribution, perhaps.

Mr. GORDON: Let us have the witness, Mr. Smith, explain here. Mr. Smith has been sworn. May he answer from where he sits?

Exam. WAY: Yes.

Mr. SMITH: Mr. Examiner, may I refer to that thing you have there? The A & D fund is the fund which is covered by a two cents deduction from savings to defray the expense of the assembling and distribution case, which

361 was held in the East, and other legal expenses.

Exam. WAY: All right. That is sufficient.

The WITNESS: I have not had an opportunity to examine these statements, as I just received them a few minutes ago, but I will do so before the hearing closes. They appear to have all the disbursements on here down through January, 1945, and to show bank balance as of March 20—or, February 6, 1944.

However, I have no information to support these penciled statements on this piece of paper.

Exam. WAY: You are referring now to the ledger of Mr. Sol Smith?

The WITNESS: Yes, sir.

Mr. TAYLOR: Mr. Examiner, may the record show at this time that objection is made to the fact that Mr. G. A. Olson has not responded in a whole to the subpoena *duces tecum* served on him, specifically, that he has not produced at this

hearing accounting records, including ledgers, check book stubs, canceled checks, evidencing disbursements, covering expenses incurred by him as general manager of the Pacific Coast Wholesalers' Association?

Mr. Gordon: Just to complete the record clearly, let us remember that at the outset I stated to the Examiner that all of the records called for by the subpoena would comprise such a volume of material that it would be imprac-
362 tical to bring it up here, and that I had brought to the court room such papers and documents as had been indicated by Mr. Taylor and Mr. Anderson that they would wish, with the exception of the records of Mr. Olson's office expenses.

363 As to those papers, after discussion with counsel and with the Examiner, I believe it was stated by the Examiner that we defer that question, any further consideration of it, until later in the hearing to see whether or not we could reach some basis of settling it without making it a controversial issue.

Exam. Way: Well, now, that wasn't exactly the understanding. The understanding was that we defer the question until we found out what records we had.

Mr. Gordon: I stand corrected, your Honor. It was deferred, at least. That is the main point I wish to bring out.

Exam. Way: Now, I think you know what the subpoena calls for, and I think I stated once before that the subpoena was broad enough to include all the matters which have been referred to here this morning, and it is my purpose now to ask you if you choose to present those papers at this hearing.

Mr. Gordon: At the conclusion of the hearing on Saturday evening, if the Examiner please, I conferred with Mr. Anderson, and suggested to him that in order to solve the question that we might—I asked him to consider with Mr. Taylor the possibility of a stipulation to this effect: That a statement be prepared and submitted as an exhibit by Mr. Olson or by anyone representing the Commission, showing the total amount received by Mr. Olson from
364 the freight account for the years 1942, 1943, 1944, which would be the same figures, I assume, that Mr. Anderson has already put into the record, which are determined by merely the multiplication of the total number of 100 pounds by the 15½ cents.

That this exhibit also include a statement of the gross expenses of Mr. Olson for the maintenance of his office and

his personnel, the expenditures of which we have respectfully urged and contended, are matters of his private business and that we show the resulting total of figures representing compensation received by Mr. Olson, and that opportunity be accorded to the Commission through its auditor or auditors or representative to go into Mr. Olson's office and personal records for the purpose of checking and verifying the correctness of the statement of expenses and resultant compensation to Olson as shown by the proposed exhibit. I submit that the presentation of the information in that manner would certainly afford the Commission all of the information that it might want in connection with this hearing; that to compel the disclosure in the record and probably through the record, also, of Mr. Olson's office expenses, subject to cross examination as to possibly other items of his personal expense, which might very well be found by the presiding Examiner or anyone else considering it, to be not connected with P. C. W. A., would be manifestly unfair to Mr. Olson and to the other individuals concerned with these expenses by him.

365 I did state that the office expenses of Mr. Olson that have any relation to the business of Pacific Coast Wholesalers' Association are carried in his personal account with all of his personal records, not only his personal records, relating to his own household and personal expenditures, but also all of his records pertaining to other traffic business which he conducts in the same office.

Now, it is going to require time to separate those documents. It will require the consideration by whoever inspects them to determine which are and which are not expenditures that have a particular relation to the Pacific Coast Wholesalers' Association affairs.

It would appear to me that the suggestion which I have made is a constructive one. It does permit this question to be settled fairly and amicably. I shall not answer this question as to whether we would or would not produce these records. I am merely speaking as counsel, and I would ask your Honor's indulgence not to answer that question at this time until we have had an opportunity to consider the suggestion which I have made and any other suggestions which might be worked out to settle the matter.

Exam. WAY: Well, I appreciate that, but I will say that I have no authority to vary the terms of the subpoena, and you are required by the terms of the subpoena, as it is issued, to furnish the documents which are referred to therein.

366 Now, if Mr. Taylor and Mr. Anderson can find some way of examining these records without having them brought in to this court, of course, that is something else, but as it now stands the documents are either to be furnished or you will be in violation of the subpoena.

Now, I think perhaps if counsel get together and discuss this matter a little farther, we can come to some conclusion as to what you want to do about it.

Mr. TAYLOR: Mr. Examiner, as I view the testimony of the officials of P. C. W. A. throughout this proceeding has been to the effect that Mr. G. A. Olson has been an employee and manager of P. C. W. A., not an agent of P. C. W. A. If an employee of Pacific Coast Wholesalers' Association, a corporation, I cannot understand the position of counsel when he states that P. C. W. A. records of that general manager and employee of the corporation are not subject to subpoena.

And we must insist that our position remain the same. If the Examiner desires conference with respect to the point raised, I shall certainly lend an ear to the end that we may dispose of the issue, if possible.

Exam. WAY: Well, suppose we recess for a period, say, 10 minutes for conference between counsel and see if the matter can be disposed of.

(Short recess taken.)

367 Exam. WAY: Have you gentlemen reached any conclusion in your conference?

Mr. TAYLOR: Mr. Examiner, we are unable to agree as counsel after conference, and I shall ask Mr. Anderson to make a statement at this time in connection with his attempts to obtain from Mr. Olson the very information we have from the first required in the investigation of the status of P. C. W. A.

Exam. WAY: All right. Proceed.

The WITNESS: At the time I was in Mr. Olson's office and Mr. Smith's office in December, 1943, for the purpose of auditing and checking the accounts with respect to the operations of the Pacific Coast Wholesalers' Association, I asked for the payroll vouchers and other expenses pertaining to the entire operation, the pay of employees, *et cetera*.

And at that time I was furnished certain data with respect to that maintained in connection with the operations, but this data did not include the information covering the expenses incurred by Mr. Olson as general manager, and,

as stated by me in the beginning of this hearing, when I asked for these Mr. Olson stated that he considered the operation, other than what he received from the Association, his personal affairs, and he did not supply information with respect to the costs incurred by him in operating P. C. W. A. And, as stated—

368 Exam. WAY: Just a moment. Read the last part of that.

(The last part of the witness' statement was read by the reporter.)

Q. (By Mr. TAYLOR) What do you mean by that? You were not inquiring, Mr. Anderson, into the expenses incurred by Mr. Olson other than P. C. W. A. matters?

A. I made it very plain that I was interested in P. C. W. A. matters and that I was not interested in personal matters or other business matters.

Q. Mr. Olson told you that he considered confidential to himself all information with respect to the operating expenses incurred by him as general manager for P. C. W. A.?

A. He did. And on arriving in Los Angeles last Tuesday, in order to make sure there would be no misunderstanding on this point, I called at the office of Mr. Gordon and advised him that we would expect such records to be furnished at this hearing under the subpoena.

Mr. GORDON: Just in the interests of accuracy, Mr. Anderson, the first day you called in my office and I was out, was I not, and didn't you arrange for an appointment the following day, Wednesday morning?

The WITNESS: Wednesday morning, 9:00 o'clock.

Mr. GORDON: The Wednesday preceding the hearing day?

The WITNESS: Yes.

Mr. GORDON: Yes. That is right.

369 Exam. WAY: Now, you have examined the data which has been furnished here?

The WITNESS: I have.

Exam. WAY: And you do not find—what is it you don't find in there?

The WITNESS: I do not find any information here with respect to expenses incurred by Mr. Olson in operating P. C. W. A. That is, the number of employees engaged on this work, the amount paid them, the amount of his office rent, and other expenses incurred in connection with P. C. W. A. matters. Nothing to show the actual income to Mr. Olson from P. C. W. A. or the total expenses made by him in operating P. C. W. A.

Mr. AMES: Do you have before you, or is there in this room, in response to the subpoena, any report made by Mr. Olson to his corporation, which would indicate the expenses incurred by him in running the P. C. W. A. to today?

The WITNESS: None. It was suggested that we try to agree on some basis of getting this information by checking those accounts for a period of three years and checking the operation of that office for the purpose of determining what part is probably applicable to P. C. W. A. matters, which would require several days—certainly more than a week—and any information that might be obtained in that way could not be furnished in sufficient time
370 to be considered here, and, in my opinion, it would take better than a week to attempt to get any such figure.

Exam. WAY: Any answer to that? I am speaking to Mr. Gordon.

Mr. GORDON: Only this, that, if the Examiner please, the matter of the subpoena is a subject which was discussed at the outset. I regret that I found myself and still find myself in disagreement with the counsel and the witness for the Commission and with your Honor as to the effect of the subpoena.

I was hopeful that as the record proceeded the facts would be disclosed to the Examiner that would lead him to conclude, as I have concluded and still believe, that Mr. Olson was employed by the Pacific Coast Wholesalers' Association, a corporation, on an agreed basis of compensation, which was indeterminate, insofar as the total amount would be, and which provided in effect that he would receive 15¼ cents for each 100 pounds of freight handled for the Association, out of which he should pay all of the administration expenses and any balance remaining was to be kept by him as his compensation for his own efforts and skill and time in management.

It appeared to me then and it does now, that that places Mr. Olson in the position of having a clear-cut line demarcation as between the expenditures out of the freight account, which are made directly for the payment of rail
371 freight, or for insurance, or whatever other items are paid directly out of that; and those other expenditures out of the freight account, which are made first by payment to Mr. Olson of 15¼ cents and from the varying amounts that would be produced from time to time and year to year, Mr. Olson would, on behalf of the Associa-

tion, set up, manage, and pay for such office personnel, quarters, outside stations and personnel at outside stations, as would be required to perform the service that he undertook to perform for the Association.

Now, it is for those reasons, if the Examiner please, that I have felt that the language of the subpoena, which will be seen to ask for records of P. C. W. A., at the very outset did not comprehend the records of G. A. Olson or Olson Traffic Service.

So far as the sincerity of counsel for the Commission and the Commission's auditor, Mr. Anderson, is concerned, there has never been the slightest doubt. They have and did ask for certain of these figures at the very outset, and it is my understanding, and I will, if necessary—and I hope to have the opportunity of putting on evidence to show—that that subject was passed over then as it has been now so far in this case, that it was hoped that with the disclosure to Mr. Anderson and his assistants of the basic facts of P. C. W. A., it would be recognized that it would not be necessary for the purpose of the Commission to have
372 the breakdown of the expenses of Mr. G. A. Olson's office.

Exam. WAY: May I—

Mr. GORDON: I would like an opportunity to conclude my observations. I have refrained from making any categorical refusal to produce records. Questions have been asked apparently designed to show that such refusal has been made and such failure has occurred. I have stated to the Commission that the records are here in the office are such portion of the records called for by the subpoena as counsel and Mr. Anderson indicated they wanted, with the single exception of the records pertaining to the expenditures—receipts and expenditures of Mr. G. A. Olson's office.

The WITNESS: In order to keep the record clear, right there let us also put in that up until now the general correspondence files have not been produced or furnished, and that only this morning were the contract files offered.

Mr. GORDON: Now, just a moment. I think I understand the rules of evidence, and when a subpoena calls for documents that are to be produced, not in advance in the courtroom for general inspection, but to be produced in connection with testimony of the witness subpoenaed, and while we have extended the courtesy of leaving our records here over the week end for the convenience of the Commission, we

resent very much being scolded and blamed for not having given them more time on that.

373 Now, we have tried to do our part to be helpful, but we certainly have not transgressed any rule of the Commission or any general rule of law in not having handed these records here to them in advance of the time when the testimony is sought to be adduced.

We will supplement any of these records that are here whenever we can do it to accommodate the Commission and its representatives.

The WITNESS: Please understand, Mr. Gordon, there was no thought or attempt on my part to scold anyone, or to bring in anything except to keep the record clear.

Mr. GORDON: The record is clear, but the point I am making is that the criticism or suggestion of the witness to the effect that we have been remiss—now, we haven't been remiss.

Exam. WAY: Now, even if it is found that Mr. Olson is employed by the Association, that fact does not relieve the respondents from complying with the subpoena. As I now understand the matter that in order to make any check of the records it requires some time to do so, which would be beyond the limits of the time allotted for this proceeding.

The records, which are called for, are the records of the P.C.W.A., as I understand it, and not the personal records of Mr. Olson.

It is assumed that the Association, as such, main-
374 tains its own records, or should, and it is those records that I understand that are sought to be produced in this proceeding. I understand they are not here. I have no authority to vary the terms of the subpoena in any way, and I will merely let the record show the situation as it stands. Have you anything further?

Mr. TAYLOR: Yes. Not on this same subject, no.

Q. (By Mr. TAYLOR) Mr. Anderson, have you had an opportunity to examine the Los Angeles Classified Directory?

A. I have.

Q. And how is the Pacific Coast Wholesalers' Association listed with respect to classification in that directory?

A. The classification sheets of the Los Angeles Telephone Directory for March, 1943, and September, 1944, show under the advertising section "Pacific Coast Wholesalers' Association" listed at the general traffic office address of Gus Olson, 108 West Sixth Street under "Freight Forwarding" with all of the regular freight forwarders. But

this classified section does not show a listing of the Pacific Coast Wholesalers' Association as an association.

Mr. GORDON: I want to object to that question and ask the answer be stricken on the ground it is irrelevant and immaterial, not binding upon this respondent or any of these respondents, and no proper foundation has been laid for it, and that it is not the best evidence.

375 Now I apprehend that the facts may be as the witness stated, and I am willing to stipulate that the directory shows certain things, reserving my objection as to the relevancy of that and as to the conclusion that that may or may not be binding on the respondents or any of them. We don't know who put those advertisements in, or classified them in the classified section.

Exam. WAY: Well, I think the fact is clear, is it,—it is not denied?

Mr. TAYLOR: We have the telephone directory here for your examination, Mr. Gordon, and we will give pages and the exact exhibit, if you wish.

Exam. WAY: Go ahead.

Q. (By Mr. TAYLOR) Mr. Anderson, in your examination of the records of Mr. G. A. Olson under subpoena here, which you did yesterday morning, what other documents in here came to your attention which should be made exhibits or the subject matter for presentation in this hearing?

A. I found there what I assume is a balance sheet of the P. C. W. A. freight account as of September 30, 1944, as it shows the assets and liabilities presumably of this account, and if that is what this statement purports to be, I would ask that we be furnished a copy to go in this record as an exhibit.

I understand from Mr. Matthews this morning that that is the last one that has been prepared by them,

376 as the accounts subsequent to that just recently closed are not closed up to date.

Exam. WAY: Let us see it.

(Document handed to Examiner.)

The WITNESS: The statement is not signed, headed or explained by any reference other than you have to assume what it is.

Mr. GORDON: I thought to interpose an objection, which I will now make, to the witness on the stand offering comments concerning documents which he has been accorded the privilege of looking at in advance of their being considered in evidence.

This document that has just been shown me, and which he has shown the Examiner, is one of many of similar type financial reports made by the general manager, Mr. Olson, of the Pacific Coast Wholesalers' Association. At the proper time and through the proper witness those documents will be identified, and a copy introduced, but I am not willing that the witness now on the stand proceed to offer comments about documents until they have been properly put in the record and introduced.

The WITNESS: I will withdraw any statement I made, with the understanding this will be furnished by you before the hearing is over. I was merely trying to describe what I thought this was, not other than just—so there won't
377 be any misunderstanding.

Mr. GORDON: That is satisfactory, Mr. Anderson. A copy will be furnished.

Exam. WAY: Anything further?

Mr. TAYLOR: Do you wish that to be identified and presented as an exhibit?

Exam. WAY: Mr. Gordon is going to introduce, as I understand, and explain it, and if it is not done, it can be brought to my attention.

The WITNESS: In examining the accounts of Mr. Sol Smith, the executive secretary yesterday, I find in there—

Mr. GORDON: Just a moment—

Exam. WAY: To save time about that, perhaps if you will submit that to Mr. Gordon, Mr. Gordon will introduce that document and explain it also, and if he does not, then you may have an opportunity to do so.

The WITNESS: O. K. Well, I understand from that these other items that were found in the accounts yesterday should be submitted to Mr. Gordon and then, if he does not submit them, we can later be accorded the privilege of presenting them.

Exam. WAY: That is my ruling.

The WITNESS: Then I have nothing further.

Exam. WAY: All right. Cross examine.

Mr. AMES: May I ask a question?
378 Exam. WAY: Yes.

Cross Examination.

Q. (By Mr. AMES) Mr. Anderson, were you given access to Mr. Olson's correspondence files?

A. Not so far.

Q. Did you request access to them?

A. I did.

Q. And you have never, then, up to the present moment, had any opportunity to examine his correspondence files relating to P. C. W. A. activities?

A. Other than the monthly statements he sends out to each member to check.

Q. No. By "correspondence," I mean possibly correspondence with outside interests?

A. None of that.

Q. And you did request it?

A. I have, yes.

Mr. AMES: That is all I have.

Mr. GORDON: I have no cross examination at this time.

Exam. WAY: You are temporarily excused, Mr. Anderson.

(Witness excused.)

Mr. AMES: Mr. Examiner, yesterday I requested that there be produced here today a car file to correspond with Exhibit 5, I believe, which was a copy of a freight bill presented by Mr. Ernst. I assume that is now in the
379 hearing room for my examination. Is that correct, Mr. Olson?

Mr. OLSON: Yes. I have the car file.

Mr. AMES: May I see it?

Mr. OLSON: I haven't looked it over yet, Mr. Ames.

Exam. WAY: Proceed.

Mr. TAYLOR: Call Mr. P. M. Hardwick.

P. M. HARDWICK, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Are you employed as Pacific Coast manager of the Dixon Valve & Coupling Company, 2333 East 8th Street, Los Angeles, California?

A. Yes, sir.

Q. How long have you been employed in that position, Mr. Hardwick?

A. 12 years.

Q. And is the Dixon Valve & Coupling Company a member of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. And since what time?

A. I believe it was about 2½ years ago we joined.

Q. You don't know the exact date?

A. I am sorry I don't. It was—

Q. Could it have been in the fall of 1942, possibly September or October?

380 A. Yes, I believe that is right.

Q. You are the representative for your concern insofar as its relations with P. C. W. A. is concerned?

A. Yes.

Q. And with relation to the facts surrounding your membership, who approached you for membership in the Association, if you were approached?

A. Why, we were not approached. I approached the Association.

Q. You personally approached the Association?

A. Yes.

Q. I see. And what is the nature of your freight?

A. Our freight is—

Exam. WAY: I beg your pardon. You say you approached the Association. For what purpose, to secure membership in it?

The WITNESS: To secure membership, yes, sir.

Q. (By Mr. TAYLOR) What is the nature of your freight?

A. The nature of our freight is iron hose couplings and iron body valves and hose clamps.

Q. And you are a wholesaler of those articles, are you not?

A. Well, we have a branch warehouse and a sales office here, and our factory is in Philadelphia.

Q. But your firm is engaged in the business of wholesaling those articles, are they?

A. Well, yes, you could call it that, I suppose. This is a distribution point for our goods.

381 Q. And what bracket with respect to rates does this freight chiefly fall under?

A. Well, I am not an expert on freight matters, so I don't know what you mean by "bracket."

Q. What rate bracket? You know, do you not, that there are certain classifications of certain commodities, and under Rule 10 there are different types—for instance, mechanical tools may be mixed under a certain rate in the tariff that allows the mixture.

Exam. WAY: Do you understand that?

The WITNESS: I know that different ones of our products take different freight rates.

Exam. WAY: Do you know anything about the classification?

The WITNESS: No, sir.

Exam. WAY: Or do you know anything about the brackets?——

The WITNESS: No.

Q. (By Mr. TAYLOR) Does P. C. W. A. handle all of your l.c.l. freight?

A. No, sir.

Q. What type of freight does it handle?

A. Well, it handles shipments made to us by our Philadelphia plant.

Exam. WAY: Does it handle all of them?

The WITNESS: Yes.

382 Q. (By Mr. TAYLOR) Pardon me. I didn't get that.

A. He asked me if they handled all of them and I said, "Yes."

Q. I thought you just told me that P. C. W. A. did not handle all of your l.c.l. freight.

A. They do not handle all of our l.c.l. freight, and I went on to say that they handle all of our l.c.l. freight that comes to us from our factory.

Q. That is in Philadelphia?

A. Yes. But we have customers who specify other methods of shipment, and we usually ship by truck from our factory, and to some customers we follow their suggestions as to routing, if they make any.

Q. And do you ship, however, all of your freight which you can control as to routing via P. C. W. A.?

A. To all points that they serve.

Q. If that particular type of freight can be placed in the brackets that P. C. W. A. engages in, is that right?

Mr. GORDON: I object to that.

Exam. WAY: Just a moment. Are your instructions to route P. C. W. A. limited in any way, in any respect, as to the kind of freight?

The WITNESS: We have only three types of products, and those three are acceptable, I think, by P. C. W. A., so we have no products that they don't carry.

Q. (By Mr. TAYLOR) Did you ever attend a meeting
383 of the Board of Directors of P. C. W. A.?

A. No, sir.

Q. Did you ever attend a meeting of the P. C. W. A. membership?

A. No.

Q. Did you ever receive a notice through the mail of a meeting of either?

A. I have received notices of membership meetings.

Q. When did you receive such notices?

A. I received one very recently. Seems to me early in January or late in December.

Q. Did you receive notice of a meeting in January, 1944?
A. I don't know. I don't recall that.
Q. Did you receive a notice of any meeting in January, 1943?
A. I don't know that, either.
Q. You don't recall but one notice of a meeting of the membership to be held? Is that right?
A. I do recall one.
Q. That was the one to which you just referred?
A. Yes.
Q. Did you receive a copy of the by-laws after the corporation was started?
A. I am sorry. I don't remember whether we did or not.
Q. Did you receive a copy of the articles of incorporation?
A. I am afraid I can't answer that, either.

384 Q. Were you ever consulted as a member with respect to your views as to whether the Association should be incorporated?

A. No, sir, unless something came through the mail that I have forgotten. This is something that I don't think about a great deal, and place no great importance on, and so they have mailed me one and I have forgotten about it.
Q. Were you informed at the time of joining the Association as to what charges would be assessed against your membership or freight tonnage?
A. You mean the rate that we were to be charged?
Q. Yes.
A. For carrying the freight?
Q. Yes.
A. They made estimates for me.
Q. And with respect to the amount to be deducted by Mr. Olson for his service for operation, were you informed?
A. I don't believe that was discussed.
Q. What, if you know, has been the amount retained by Mr. Olson for his compensation?
A. I don't know that.
Q. You don't know what different costs are that go to make up the 15¼ cents deduction that Mr. Olson has taken against your freight?
A. Well, not in detail, no, I don't.
Q. You have heard since coming to this hearing considerable discussion relative thereto, have you not?

385 A. Yes, sir.

Q. Well, at the time you took out your membership in the Association, you were interested primarily, of

course, in moving this freight from Chicago to Los Angeles as cheaply as possible?

A. Yes.

Q. And the rates of the Association, of course, were less than the freight forwarders' rates, and that was an inducement for your membership?

A. Yes, sir.

Exam. WAY: Any other inducement?

The WITNESS: No other inducements.

Q. (By Mr. TAYLOR) Were you consulted in any way by any official or employee of the old association prior to incorporation as to your judgment regarding the assessment of this 5 cents revolving fund that was provided for in Article II, Section 6 of the by-laws?

A. Well, if I was, I have forgotten it.

Q. Have you ever received any refund from that fund?

A. Not that I know of.

Exam. WAY: Ask him if he contributed to the revolving fund.

The WITNESS: They deduct this 5 cents, or whatever it is, per hundredweight, from the amount of savings that we get, and in that sense I suppose we contribute.

386 Q. (By Mr. TAYLOR) Have you ever been furnished any statement from Mr. G. A. Olson or from Mr. Sol Smith or from Mr. Ernst relative to the total income of the general manager, Mr. Olson, and to the total expenses of his office relative to the operations as general manager of the Association for any year or any fixed period?

A. No, sir.

Q. I believe that is all, Mr. Hardwick.

Exam. WAY: Questions?

Cross Examination.

Q. (By Mr. AMES) Mr. Hardwick, you stated in your testimony that someone had contacted you and made estimates for you on the possible freight savings you could effect. Who made those estimates for you?

A. I believe it was either Mr. Matthews or Mr. Olson.

Q. Prior to the time you began to use the services of the P. C. W. A., had you used other freight forwarders?

A. Yes.

Q. Regular freight forwarders?

A. Yes.

Q. And if the P. C. W. A. were not in existence today, it would be possible for you to use those forwarders today, would it not?

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A. Yes.

Q. I believe, if I understood you correctly, that
387 the freight as to which you have control of the routing, is all of that character which is handled by the P. C. W. A.? Is that correct?

A. Yes.

Q. And that is the freight of the so-called first three brackets?

A. I don't know what you mean by the "three brackets."

Q. Well, freight that has a rate of either $1.10, $1.34, or $1.78 from Chicago. Maybe you understand that?

A. No, I don't.

Q. Well, how did you come to the conclusion, then, that all of your freight was subject to P. C. W. A. handling under their limitations?

A. We found that out before we joined P. C. W. A.

Q. Was that information supplied to you?

A. Yes, sir.

Q. By Mr. Olson or Mr. Matthews?

A. Well, that our commodities could all be carried by them?

Q. Yes.

A. Yes.

Q. With whom of the P. C. W. A. did you have your first contact before joining the Association?

A. Well, I don't remember who it was.

Q. You have no recollection of that?

A. No.

Q. Well, that is all I have.

388 Exam. Way: Mr. Gordon?

(By Mr. Gordon) Mr. Hardwick, do you know Mr. Pedder of the Ducommun Metals & Supply Company?

A. Well, I have talked with him on the telephone.

Q. Isn't it a fact that Mr. Pedder first brought your attention to this P. C. W. A.?

A. Yes, sir.

Q. And didn't he explain to you the possible savings that you could accomplish in your transportation costs if you were a member of that Association?

A. I believe he did.

Q. And didn't he also tell you, in a general way, what the amount of the savings would or might be?

A. I don't remember that, Mr. Gordon.

Q. And it was that that led you to contact someone connected with P. C. W. A., was it not, your discussion with Mr. Pedder?

A. Yes, sir.

Q. And now, I don't know whether you now remember the figures or not, but do you remember, and is it a fact that when you first contacted Mr. Matthews or Mr. Olson, whichever it was, that they explained to you the overall deductions, or, perhaps, the individual deductions that were to be made from your payment of freight charges and the amount that would be refunded to you after savings?

A. Yes. Something like that was explained to me.

389 Q. Was it explained to you that you would be asked to pay in the first instance a double bill by P. C. W. A. for the amount equivalent to the freight charges of the regulated forwarders, plus 3 per cent, and that thereafter the Association would figure out certain costs and refund to you the difference?

A. Yes.

Q. And in that connection, Mr. Hardwick, wasn't it stated to you that the Association would deduct 15¼ cents per 100 pounds for the cost of administration and billing, and like matters, that they would pay the rail freight and would also deduct this 5 cents per hundred pounds set up for revolving fund, and 1 cent for legal expenses? So that they showed you an overall statement of what the deductions would be?

A. You are asking me now if that was explained to me before we became members?

Q. Yes, all those things?

A. There was no revolving fund when we became a member, so they couldn't have explained it.

Q. That came later?

A. Yes.

Q. But after all that these other matters—I mean matters of this type, were explained to you?

A. Yes, that certain expenses were to be held out by the Association.

390 Q. Now, with respect to the incorporation of this company, do you recall that some time during the spring of 1943 you were asked to sign an acceptance of membership in the corporation?

A. Yes, sir.

Q. And do you recall that you did so?

A. Yes.

Q. And send it in?

A. Yes, sir.

Q. And was the certificate of membership thereafter mailed to you?

A. Yes, sir.

Q. When this request or form of acceptance of membership was sent to you, don't you recall that there was then sent to you a typed or mimeographed copy of the articles of administration and the by-laws of the company, of the new corporation, or don't you recall?

A. I am sorry, I don't remember that.

Q. You don't recall that?

A. No, sir.

Mr. GORDON: That was all the questions I have of this witness other than to ask him to identify the documents which Mr. Smith is trying to find among the records.

Exam. WAY: Well, he may do that later. You are excused temporarily. I want you to identify some papers here later.

(Witness excused.)

391 Exam. WAY: Call the next witness.

O. W. WEYMAN was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. O. W. Weyman, owner of The Gasket Supply House, 215 West 15th Street, Los Angeles, California?

A. I am.

Q. And this concern is a member of the P. C. W. A.?

A. Right.

Q. When did you become a member, Mr. Weyman?

A. I became a member, I believe, prior to the time that any by-laws or anything else was originated.

Q. I note from the record that you were one of the early members?

A. Yes.

Q. First joining the Association in what year, 1936?

A. I don't remember whether it was 1936 or 1934. It was right at the beginning when there was nothing concrete about it, when they first got the idea.

Q. What was the nature of your freight at that time?

A. Automotive gaskets from Chicago.

Q. And it has continued to be the same?

A. The same setup, yes.

Q. And you were among the very first members,
392 of course, from your statement?

A. Yes.

Q. Have you ever been on the Board of Directors?

A. No.

Q. Have you ever attended a directors' meeting?

A. Not that I ever can recall.

Q. Did you ever get a notice of a directors' meeting?

A. If I have, I don't recall it.

Q. Did you ever attend a membership meeting?

A. I couldn't say definitely to that. I don't remember having attended one.

Q. Do you recall ever having a notice of a membership meeting?

A. I think there were notices mailed. It dates back quite a long ways, but I don't say that I have had very many of them.

Q. I believe you are the first witness, including the directors, who have stated that there were ever any notices given with respect to membership meetings in the old, unincorporated association. Do you mean to say that there were notices mailed out at that time?

A. I don't know. I was not specifically a member in the old association. That has been some time ago that I had received notices of meetings, some time ago, and just how many that has been, I don't know.

Q. Now, then, as to the recently incorporated As-
393 sociation, that is, September, 1943, did you ever receive notice before the incorporation that a proposal had been submitted to incorporate?

A. No, sir.

Q. You did not know that it was incorporated until you were later advised?

A. I heard indirectly that it was going to be incorporated, and I had no objections, and naturally I didn't make any comment about it.

Q. And you did not attend any meetings in connection with it, any meetings on drafting of the by-laws?

A. Nothing at all.

Q. On what basis, if you know, did the general manager, Mr. Olson, make deductions for his services prior to the incorporation?

A. In what manner?

Q. On what basis as to allowances?

A. Well, it was changed from time to time. As I recall it, in the early days they had no specific basis to determine charges on. Overhead cost was going to be per hundred pounds, and it was constantly agreed at that time, I believe, that 10 cents 100 pounds would be the temporary figure, I believe, that would be used in deduction on all freight that we handled. Whether that was true all the

way through or not, I don't know. But that is my
394 recollection, that 10 cents a hundredweight was to be used in making deductions for overhead or running the office here.

Q. That was the amount of compensation of Mr. Olson at about the time you became a member, 1935, or 1936?

A. Around 1934, or in there, I believe.

Q. The Association was formed in October, 1934 primarily, and then it was later reorganized, the record shows, in March, 1935, so I assume you are speaking of the actual organization date in 1935 of the old association.

A. That is right.

Q. From 10 cents per hundredweight to what next figure did the allowance advance?

A. I couldn't state that. I really don't know. There were changes intermittently.

Q. What bracket did your freight fall under back in 1936?

A. Do you mean the rate classification?

Q. Yes.

A. I haven't the least idea. I know nothing at all about tariffs or freight rates at all.

Q. You don't know, then, that there was a 5 cent charge to be retained by Mr. Olson on one bracket of freight and a 10 cent allowance to be retained on another bracket of freight as of about 1936?

A. Well, I don't recall.

Q. It was your understanding that there was a 10
395 cent bracket—that is, I assume—which your freight was charged, and that is the only bracket that you were familiar with?

A. That is all. As I said, I have never been active in the affairs of the Association at all, nor attended any particular meetings, and when I refer to the figure of 10 cents, I believe that figure was adopted prior to the dates of any articles or any by-laws of the Association, and after that first contact, which was made, presumably, as I recall it, around 1934, there was—there had been no Board of Directors, there had been no association of any kind.

Mr. Sol Smith, who was executive secretary of the Downtown Jobbers' Association, which I have been a member of for a long time, has asked me about this association, and, having the fullest confidence in his ability and honesty, I told Sol Smith whatever he wanted to do would be perfectly agreeable with me. And that is the way it has been

ever since. I have never had an occasion to question his integrity or ability along lines of secretarial ability he performs for the Association.

Q. You always followed the suggestions of Mr. Smith in any of your associations or obligations with the Association?

A. That is right.

Q. Were you ever consulted, Mr. Weyman, in connection with the increase of that basic 10 cents per 100 pounds allowance for service to Mr. Olson?

396 A. I think there are letters in my file. Whether they will be still in existence or not, I don't know. They date back quite a few years, and I don't know just how long we have our correspondence down there—five years—I don't know whether they are still in existence or not.

Q. Were you ever furnished any annual report or any kind of report covering the activities and operations of the Association as a whole, with respect, for instance, to the total tonnage handled during the year for all members, and total costs of operations and total expenses of the general manager's office, showing net compensation to the general manager at the end of any certain period?

A. I never have, and never asked for it, either.

Q. Thank you, Mr. Weyman. That will be all.

Exam. WAY: Cross examine?

Cross Examination.

Q. (By Mr. AMES) Mr. Weyman, do I understand that all of the freight that you receive, like carload freight, is susceptible of handling by P. C. W. A.?

A. Very satisfactory.

Q. I mean, they will handle it? It is within a certain freight bracket?

A. I presume so. They have been handling it.

Q. Do you have any carload freight that you use any other service than P. C. W. A. on?

397 A. We buy material from Denver. I believe they have their own routing on that. They deliver that f.o.b. L. A., and I think they use Denver-L. A. Motor Transportation on that.

Q. That is a case where you don't control the mode of transportation?

A. No, sir.

Q. In all cases where you do control the mode of transportation you use P. C. W. A.?

A. Yes, sir.

Q. Prior to the time you joined the Association did you use other freight forwarders?

A. I don't think we specified how it was to come out. I think we left it to the jurisdiction of the factory, but I believe they shipped with Universal or National.

Q. As far as you are concerned, on the freight on which you control the routing you could use these other forwarders today, if you wanted to?

A. Probably.

Q. That is all.

Mr. Gordon: Could we take a recess for about three minutes?

Exam. Way: Yes. Five minutes.

(Short recess taken.)

Exam. Way: All right, Mr. Gordon.

Q. (By Mr. Gordon) Now, Mr. Weyman, you referred to your memory of the original charges made by the
398 Association as being 10 cents 100 pounds. Did you from time to time receive checks representing a refund to you of certain freight charges?

A. We did.

Q. From the Association?

A. We did.

Q. And on this, you understand, that you were billed in the first instance by Pacific Coast Wholesalers' Association in an amount equivalent to the regular forwarder rate, plus 3 per cent on your shipments?

A. I don't think that 3 per cent—I don't recall it, but I don't believe that 3 per cent was in effect in the early days.

Q. That was not applicable to you in the early days?

A. Not that I remember.

Q. But later it was? Is that right?

A. What is that?

Q. The 3 per cent was put on later?

A. I think it was. I wouldn't say definitely.

Q. And when you were so billed, you paid into the P. C. W. A., did you not, the amount of charges shown by these billings?

A. I don't remember, but I believe in the early days of the Association that we sent our checks direct to Olson, although we might have sent them to Sol Smith. I don't remember. I am somewhat hazy on that.

Q. Well, more recently, beginning in 1942, what
399 was your custom then?

A. Checks were mailed to Olson.

Q. Representing the amount of these billings?

A. Bills of lading.

Q. Which was freight forwarder rate less 3 per cent?

A. I haven't seen one in a year or so, so I don't know what the deduction was.

Q. Each month wasn't there a refund made to you representing savings to you in your transportation costs under what you had paid?

A. Yes, I think there was a check mailed to us each month, covering the tonnage that was supposed to have been delivered to us during the preceding month.

Q. So that you were able to determine from that, weren't you, how much had been deducted and how much you had saved?

A. The man that has charge of that in my place of business each time we get a shipment in covering a C. L. A. bill of lading of recap, the C. L. A. number—

Exam. WAY: What C. L. A. stand for?

The WITNESS: I don't know, personally. What is that, Gus?

MR. OLSON: Chicago-Los Angeles.

Exam. WAY: Continue.

The WITNESS: That is shown in connection with the amount of freight paid as well as the tonnage covering that individual shipment. At the end of each month that is totalled, and when the check is received from Olson's office, it is compared, and I don't believe there has ever been an instance when we have had to question or call Mr. Olson's office on that.

Exam. WAY: What do you mean "it is compared"?

The WITNESS: Well, it is compared—this party that does that down there, he knows what the deductions are, and he has the gross tonnage for that particular month, and he knows what the deduction is, and, consequently, he knows what the rebate to us will be.

Q. (By Mr. GORDON) He checks the accuracy of this statement?

A. Yes, compares it.

Q. And the amount of the check you receive in connection with it?

A. That is right.

Q. And you knew, did you not, that the charge for administration and management of the operations had been increased later from 10 cents to 13 cents?

A. Yes, sir.

Q. And you knew, didn't you, that the corporation set up a revolving fund of 5 cents per 100 pounds?

A. I did.

Q. And also 1 cent a hundred pounds for legal expenses?

A. I didn't know about the 1 cent.

401 Q. You did not?

A. No, I did not.

Exam. WAY: Now, were you able to take one of those bills and break it down and determine the separate elements of the original freight charge and all of the deductions?

The WITNESS: I wouldn't, no.

Exam. WAY: Well, how would you know that it was right?

The WITNESS: Well, I say, this man that has charge of that knows what the rate, the charge is, as far as Olson's office is concerned, and he knows the total tonnage we received during that month. Consequently, it is a simple method of arithmetic in arriving at the figure we are supposed to get in the matter of what we receive in rebate again.

Exam. WAY: Well, Mr. Gordon, perhaps you can, before this hearing is over, and I suppose you will have somebody on here who will explain the methods in detail?

Mr. GORDON: Yes.

Exam. WAY: Well, then, there isn't much use in carrying on the investigation with witnesses who admittedly don't know about what the rates are or any of the details. Simply to confirm that this witness, representing a member, knew what we think were the substantial facts about it. That is, in general.

Mr. GORDON: That is all right, we will do it.

Q. (By Mr. GORDON) Mr. Weyman, I call your at-

402 tention to a document—pardon me, I will show this to counsel—a document in the form of a letter addressed to Mr. Sol Smith, Executive Secretray, Pacific Coast Wholesalers' Association, 2514 South Hill Street, Los Angeles 7, dated July 31, 1944, and purporting to be signed by the Gasket Supply House by O. W. Weyman, Proprietor. Will you identify that document as bearing your signature as proprietor of the Gasket Supply House?

A. I do.

Q. Do you recall signing that?

A. I do.

Q. I will read this document into evidence, addressed to Mr. Sol Smith, as I stated. The document is entitled:

"Certificate of Membership, Pacific Coast Wholesalers' Association, No. 9, issued to the Gasket Supply House on March 15, 1944.

"The undersigned certifies the receipt of the above certificate and agrees to be bound by all the terms, conditions, and contracts contained in the articles of incorporation and by-laws of this corporation now in force or hereafter to be adopted, and acknowledges that he has read the same and knows the contents thereof."

Dated 31 July, 1944. Signed by the Gasket Supply House, by O. W. Weyman, Partner.

403 Do you recall whether you did or did not receive a certificate of membership in connection with this document?

A. If I have, I don't remember of it.

Q. And the articles of incorporation and by-laws, did you receive a copy of those at that time?

A. I don't recall those.

Q. Is it possible that they might have come into possession of somebody else in your organization?

A. In the last two or three years? Yes.

Q. I call your attention to the book of minutes of the Pacific Coast Wholesalers' Association containing a specimen copy of certificate of membership. Will you look at that and state whether that recalls to your mind whether you received a certificate of membership on a similar form?

A. I don't recall that. We might have.

Q. And I call your attention to a mimeographed copy of the articles of incorporation and by-laws and ask you if from looking at these you can recall whether or not you received similar copies?

A. I don't recall that one at all.

Mr. TAYLOR: Which?

The WITNESS: The articles of incorporation. I don't recall it. We might have it down in our office now.

Mr. TAYLOR: You don't recall having read it or having received it?

404 The WITNESS: No, I don't remember. I don't remember this one, either.

Mr. TAYLOR: "This one." You refer to as being the document, the by-laws of the Association, incorporated?

The WITNESS: Yes.

Mr. GORDON: That is all.

Mr. AMES: Mr. Examiner, may I ask one question?

Exam. WAY: Yes.

Q. (By Mr. AMES) Mr. Weyman, did you receive any prepaid shipments?

A. Yes, we get prepaid shipments. There are times here that have originated, probably since the war began, when the factory makes shipments via some other carrier, presumably, you might say, National or Universal, out of Chicago, and they will prepay the freight.

Q. Have you ever received any prepaid shipments handled by P. C. W. A.?

A. I don't recall any.

Q. And that letter you identify as having been signed by you, did you compose the letter?

A. No. That is a form letter that I think was adopted in the early days of the organization. I don't know just when it was originated.

Q. You did not compose it?

A. No, sir.

405 Q. Who did, do you know?

A. I do not know.

Mr. AMES: That is all.

Mr. GORDON: I would like to have the privilege of asking a few more questions, if I may.

Exam. WAY: All right.

Q. (By Mr. GORDON) I call your attention to another form letter, mimeographed form, parported to bear the signature of the Gasket Supply House by O. W. Weyman, and ask you if identify that is your signature, Mr. Weyman?

A. That is right.

(Letter handed to counsel.)

Mr. GORDON: The letter is as follows, which is identified by the witness:

"Mr. Sol Smith, Executive Secretary, Pacific Coast Wholesalers' Association, 2714 South Hill Street, Los Angeles, California.

"Dear Sir:

"The undersigned hereby approves the by-laws of the Pacific Coast Wholesalers' Association, a non-profit corporation organized under the laws of the State of California and accepts membership therein.

"Yours very truly,

"GASKET SUPPLY HOUSE
"By O. W. Weyman."

406 Signed "Owner" and corrected in pencil to say "General Manager."

That should be "Partner"?

The WITNESS: It is partner now.

Q. (By Mr. GORDON) Dated last year, June 25—

A. 1944.

Q. Wait a moment. I am not sure whether that is June or January. Which is it? June, I think.

A. I think that is January.

Q. What is your best judgment as to what the month is? Well, that is all right.

A. Yes. I would say that would be January.

Q. All right. 1944. Now I call your attention to another copy of a letter purporting to have been written by Sol Smith on a letterhead of the Pacific Coast Wholesalers' Association under date of February 9, 1944 and setting forth that: "On January 24th we mailed a copy of our articles of incorporation and by-laws to all members." Now, do you recall in view of your identifying the letter of January 25, that you did receive through the mail the copy of the articles of incorporation and by-laws which you state that you approved, and Mr. Smith's letter says was mailed?

A. Evidently they are and in my possession down there in the safe.

Q. Do you have any independent recollection of it at all?

407 A. No, I don't.

Mr. TAYLOR: And you don't recall having read either one of those documents, do you, Mr. Weyman?

The WITNESS: No, I don't remember.

Exam. WAY: Anything further?

Mr. AMES: I will ask ask you: The letter which you have identified as containing your signature, that was or was not composed by you?

The WITNESS: No, that is a form letter.

Mr. AMES: And you don't know who composed it?

The WITNESS: No, I don't.

Mr. GORDON: We will produce evidence to show that all these letters, asking approval and consent, were composed by the executive secretary and mailed out by him for signature.

Exam. WAY: You may be excused.

(Witness excused.)

Mr. AMES: Mr. Examiner, I have the underlying document, which is Exhibit 5, which is a freight bill introduced by Mr. Ernst, and I wonder if Mr. Gordon would stipu-

late with me the contents of these underlying documents so we can avoid putting them into the record, Mr. Gordon?

Mr. Gordon: Thank you.

Mr. Ames: The railroad bill of lading underlying the consignment received by Mr. Ernst as exemplified by Exhibit 5 shows Baltimore & Ohio Railroad bill of
408 lading dated November 28, 1944, at Chicago, Illinois and it shows 69,478 pounds of mixed freight in Cars PFE 62261 and 73860. It is consigned to Pacific Coast Wholesalers' Association care of A.B.C. Transfer & Warehouse Company, San Francisco.

409 The railroad freight bill issued by the Atchison, Topeka & Santa Fe Railway Company shows Pacific Coast Wholesalers' Association, care A.B.C.—that is the consignee, and shows collection of a total freight charge of $771.19, plus the item indicated as tax of $23.14. In other words, Mr. Examiner, the freight bill introduced by Mr. Ernst shows that they paid a tax of three per cent, or $2.10.

Mr. Gordon: Just a moment. The freight bill introduced by Mr. Ernst does not show a tax. It shows a three per cent and a figure—

Mr. Ames: I will ask counsel whether the three per cent tax constitutes a three per cent transportation tax.

Mr. Gordon: I make no stipulation. It is merely a figure, and the payment of the tax is a subject of discussion between P. C. W. A. and the Internal Revenue Department. The figures speak for themselves.

Mr. Ames: Well, of course, I will have to yield to that. Exhibit 5 speaks for itself. This shows three per cent, and the railroad freight bill shows a tax of $23.14.

Exam. Way: Making a total of $794.33. Do you propose to introduce that in the record as an exhibit?

Mr. Ames: These are original records, Mr. Examiner, that is a reference I read from it. He thought he would want to retain them in his file.

Mr. Gordon: They are correctly read into the record.

410 Exam. Way: The only question involved is the three per cent?

Mr. Ames: The only disagreement is that railroad freight bills definitely show it as a tax, and the freight bill of Mr. Ernst shows merely three per cent.

And then to complete the file, there is an inbound freight bill—

Exam. WAY: Now, Mr. Ames, carry that over into the account of P. C. W. A. I am not clear about that.

Mr. AMES: I am not, either, Mr. Examiner, and I think that should be developed by the Commission, if I may make the suggestion, just what the three per cent is. I, of course, jumped to the conclusion it was a tax.

Exam. WAY: So far all we have is a bill of lading showing the consignment and the—

Mr. AMES: They have collected a charge, Mr. Examiner, on the railroad rate for the assembled carload. They collected a tax, and they have paid a tax. And then their consignee has paid what he thought was a tax, but what they say was merely three per cent, and I think that should be developed, what this three per cent on Exhibit 5 is.

Mr. GORDON: We are prepared to do that, Mr. Examiner.

Exam. WAY: I am trying to put that thought in there. So far we have a bill of lading and we have a freight
411 bill. Now, then, something else would come in the collection of that amount by the P. C. W. A., and it is the last thing that I am trying to determine where the collection was made of the three per cent or tax or whatever it is, by P. C. W. A.

Mr. AMES: Now, here it refers to an inbound freight bill to Chicago on three boxes of iron nuts, that is, covering freight bill issued by Nighthawk Freight Service, Incorporation, and that shows three boxes of iron nuts were consigned to Pacific Coast Wholesalers' Association at Chicago and in the body of the freight bill appears "Marked for Featherstone's, Los Angeles, California."

Now, that freight bill shows a weight of 575 pounds at a rate of 47 cents, totalling $270.00.

And that freight bill contains the word "tax". And opposite that word is the figure of "eight cents".

Neither completes the entire picture of the inbound truck bill, the railroad carload bill, and the bill to the consignee of P. C. W. A.

Exam. WAY: Now, let us go a step further and make delivery and settlement with the—

Mr. AMES: That, of course, I am not in a position to do. I think Mr. Gordon will probably develop that.

Exam. WAY: I want to carry that clear through to its ultimate conclusion, Mr. Gordon.

Mr. GORDON: That is what we want to know, and
412 we are taking it step by step with Mr. Matthews and taking it clear through to its ultimate destination.

Exam. WAY: That is what I want.

Mr. TAYLOR: I understand, Mr. Examiner, at this time Mr. P. M. Hardwick and Mr. O. W. Weyman, who have just testified in answer to subpoenaes, are busy men and they would like to be excused from any further appearance at this hearing, and for the Commission that is agreeable.

Mr. GORDON: Mr. Hardwick, I don't believe, had completed his testimony.

Exam. WAY: There was something in Mr. Hardwick's testimony, something more than he had to do when called upon.

Mr. GORDON: Mr. Hardwick, will you resume the stand, please.

P. M. HARDWICK recalled as a witness, and having been previously duly sworn, testified further as follows:

Mr. TAYLOR: Well, as to Mr. Weyman, are there any objections to his departure at this point in the hearing?

Mr. GORDON: None on my part.

Mr. AMES: No.

Exam. WAY: You will be excused.

Q. (By Mr. GORDON) Mr. Hardwick, I call your attention to a document in similar form to the one I read into the record a few moments ago regarding certificate of
413 membership in Pacific Coast Wholesalers' Association, No. 34, issued to Dixon Valve & Coupling Company, on March 15, 1944, and ask you if you can identify the signature on the mimeographed form letter?

A. Yes, that is my signature.

Q. You wrote in the first name, Dixon Valve & Coupling Company, by P. M. Hardwick, Pacific Coast manager?

A. Yes.

Q. That is yours?

A. Yes, sir.

Q. Will you read the body of that form letter?

Exam. WAY: Well, is it the same as we have already had?

Mr. GORDON: Yes.

Exam. WAY: It is not necessary to read it.

Mr. TAYLOR: It is the same as to date. The number is 34. That is the date issued, March 15, 1944. I assume that is the date that Mr. Sol Smith put on the form and the place provided here for the date of the signature is in blank.

Q. (By Mr. GORDON) Mr. Hardwick, did you receive the certificate to which that refers?

A. Yes.

Q. Do you have it with you now?
A. Yes, sir.
Q. Will you produce it?
(Witness produces document.)

Mr. GORDON: May it be stipulated, Mr. Taylor,
414 that the certificate which the witness has now produced is in the identical form as the certificate shown in the Articles—rather, the By-Laws of the corporation?

Mr. TAYLOR: It is so stipulated.

Q. (By Mr. GORDON) And it is certificate No. 34, is it, Mr. Hardwick?
A. Yes, sir.
Q. Now, do you know Mr. Charles R. Simmons?
A. Yes, sir.
Q. Did you ever have occasion to see letters from him or see his signature so you have occasion to be familiar with his signature?
A. Yes, sir.
Q. Who is Mr. Simmons?
A. He is treasurer of our company.
Q. Located in Los Angeles or elsewhere?
A. No, he is located in Philadelphia.
Q. I call your attention to a letter addressed to Mr. Sol Smith, Executive Secretary, Pacific Coast Wholesalers' Association, 2714 South Hill Street, Los Angeles. This is also apparently a mimeographed form letter and reads as follows:

"The undersigned hereby approves the By-Laws of the Pacific Coast Wholesalers' Association, a non-profit corporation, organized under the laws of the State of California, and accepts membership therein."

415 Signed: "Dixon Valve & Coupling Company, by Charles R. Simmons, Treasurer."

"Dated at Philadelphia, 2/8/1944."

I ask you to state whether or not you identify the signature appearing on that as the true and correct signature of Mr. Charles R. Simmons?
A. Yes, sir, that is his signature.
Q. I show you now, Mr. Hardwick, mimeographed copies purporting to be copies of the Articles and By-Laws of the Pacific Coast Wholesalers' Association, and ask you, after looking at those to refresh your memory, if you recall whether you have ever seen them before or documents similar to that.
A. Yes, I have seen them before. These were sent to me, and I sent them on to Simmons, the treasurer. So, I have seen them.

Mr. TAYLOR: You refer to the Articles of incorporation and the By-Laws of the corporation, do you not?

The WITNESS: Yes, sir.

Q. (By Mr. GORDON) And did you send them on to Mr. Simmons at or about the time Mr. Simmons dated this letter, 2/8/1944?

A. About that time.

Mr. GORDON: I think that is all.

Q. (By Mr. TAYLOR) Mr. Hardwick, did you, at the time of the receipt of these documents, the Articles of incorporation and the By-Laws, read them?

416 A. I probably read them.

Q. If you read the copy of the By-Laws, will you please state what provision is made therein as to the amounts to be retained by the general manager for his services?

A. I don't recall that any amount is mentioned in the By-Laws.

Q. You don't recall that?

A. I don't recall it.

Q. You don't recall that a revolving fund is provided for in the By-Laws?

A. It may be. I learned about that revolving fund already?

Q. At this hearing?

A. No, before coming here, some time ago.

Q. But you don't recall whether that provision is in the By-Laws or not?

A. I don't know whether it is in the By-Laws or whether it was through some other paper that I learned about it.

Exam. WAY: You are excused.

Mr. TAYLOR: Is Mr. Hardwick excused from further appearance at this hearing? Is that agreeable with counsel?

Mr. AMES: Yes.

Mr. GORDON: Yes.

(Witness excused.)

Mr. TAYLOR: May the record show at this time that in connection with the subpoenas *ad testificandum* as several witnesses are here, Mr. R. L. Hutchinson, manager

417 of the Square D Company, 1320 East 16th Street, Los Angeles; Mr. Dewey Barber manager of the Production Equipment Company, 651 East Gage Avenue, Los Angeles. Those gentlemen, insofar as the Commission is concerned, are excused from their subpoenas as to further appearance at this hearing.

Exam. WAY: They may be excused.

Mr. TAYLOR: I call Mr. O. C. Butler.

O. C. BUTLER, was sworn and testified as follows:

Direct Examination:

Q. (By Mr. TAYLOR) Are you the president of the Pacific Transportation and Warehouse Company, located at 825 East 62nd Street, Los Angeles?

A. Yes, sir.

Q. And how long have you been president of that company?

A. Since the incorporation, I believe, in 1933.

Q. And do you have a contract with the Pacific Coast Wholesalers' Association or with Mr. G. A. Olson for the handling of P. C. W. A. freight at your warehouse?

A. We have an agreement.

Q. A written agreement or a verbal agreement?

A. The agreement was verbal, and, I believe, was confirmed in writing by Mr. Olson.

Q. What was the date of the first verbal agreement which you had with Mr. Olson?

418 A. I don't remember the exact date, but I believe it was in 1941 or 1942.

Q. If I mentioned the date of June 18, 1942, would that refresh your memory as to the date that the first P. C. W. A. freight was received at your warehouse from Chicago?

A. No, I wouldn't be able to confirm the date.

Q. Who joint loads with P. C. W. A. in connection with the freight contained in those cars from Chicago?

A. There is freight in those cars from P. C. W. A., and Hardware & Metal Carloading Company.

Q. Is Hardware & Metal Carloading Company a freight forwarder, or do you know?

A. I do not know.

Q. And has P. C. W. A. and Hardware & Metal Carloading Company joint loaded during all the period that we are speaking of, wherein your warehouse has served as a Los Angeles distributor?

A. They have the last year or two. I am not certain about the time when they started.

Q. Have they joint loaded since June, 1942?

A. I don't remember.

Exam. WAY: Well, do you know whether they have joint loaded recently?

The WITNESS: They are joint loading now, yes.

Exam. WAY: For how far back?

The WITNESS: At least two years.

419 Q. (By Mr. TAYLOR) How many cars, approximately, per week of P. C. W. A. from Chicago do you unload at your warehouse?

A. About three a day.

Q. About three carloads a day?

A. Yes, sir.

Q. Are you speaking now of the tonnage, complete tonnage of P. C. W. A. along with the Hardware & Metal Carloading Association or does the P. C. W. A. do a proportionate amount of the three carloads per day?

A. That is the total of the two of them.

Q. May I ask you at this point: What is the approximate percentage as to the division of tonnage?

A. It is about equal in weight.

Q. It is about equal?

A. Yes, sir.

Q. Going back to the occasion of the first verbal agreement which you had with Mr. Olson, state in your own words all the circumstances surrounding this verbal agreement. Did you go to see Mr. Olson or did he come to see you?

A. Originally I went to see Mr. Sol Smith. I didn't know Mr. Olson was connected with it at that time.

Q. About what time was this when you went to see Mr. Sol Smith?

A. In 1936.

420 Q. And a number of years went by, and in the meantime you did not handle their tonnage? Is that correct?

A. That is correct, yes, sir.

Q. And since 1941 or 1942 you did start handling tonnage for P. C. W. A.?

A. That is right.

Q. What were the circumstances attending at the breaking point in the handling of P. C. W. A. freight at your warehouse?

A. We handled their freight for about a year, as I recall, up to the Santa Fe Depot before they ever started shipping cars down to our warehouse.

Q. Was that in downtown Los Angeles?

A. Downtown Los Angeles. At that time we didn't unload the cars.

Q. And then you had some contact with Mr. Olson, is that so, or did you next see Mr. Sol Smith?

A. I saw Mr. Olson. I think Mr. Olson contacted me at that time, if I remember right.

Q. And what was the nature of your conversation at that time with respect to the contract to handle their freight?

A. He asked me if we were in a position to handle it and what we were charging for handling it, if we were in the position. And I told him we were in the position to handle it, and I told him what we would charge him for the delivery.

Q. And did you reach an agreement at that time as to what charges you would collect for handling his freight?

421 A. We reached a temporary agreement, subject to adjustment one way or the other after 30 days, if I recall.

Q. That was in 1941 or 1942?

A. Yes, sir.

Q. And what was the amount mentioned for unloading freight and handling it at their store or whatever else you may have contracted to do? How much per 100 pounds did you arrive in the contract at?

A. We had no charge whatever for unloading, because at that time we didn't unload the cars. The drayage, if I remember right, was between ten and twelve cents per hundred.

Q. For just drayage?

A. Yes.

Q. But you had no contract for unloading?

A. No, we didn't have any contract for unloading at that time.

Q. Was that in 1942 or in 1941?

A. 1941.

Mr. GORDON: I would like the record to show that I have just directed counsel's attention to the correspondence file between Pacific Coast Wholesalers' Association and Mr. Butler pertaining to the matters concerning which he is giving evidence, and I think his mind will be refreshed as to the dates and when these transactions were had, and matters pertaining to them.

422 Q. (By Mr. TAYLOR) Well, Mr. Butler, please refer to this letter which purports to be a copy of a letter on the Pacific Coast Wholesalers' Association letterhead, G. A. Olson, traffic manager, October 11, 1940, addressed to the Pacific Transportation and Warehouse Company at Los Angeles.

Please refresh your memory, Mr. Butler, and then advise for the record the amounts of charges agreed to at that time, and what they covered, briefly?

A. This letter is dated October 11, 1940, and is a confirmation of the agreement reached with Mr. Olson for the handling of his freight from the Santa Fe Downtown Depot to their accounts, to their members, flat rate of nine cents per 100 pounds.

Q. And you reached an agreement with Mr. Olson to handle the drayage of that freight for nine cents per 100 pounds, and that agreement continued until what date, Mr. Butler?

A. The next letter in the file is dated June 4, 1942, at which time they started to forward the cars to our warehouse to be unloaded.

Exam. WAY: Now, where was that drayage from and to, Mr. Butler?

The WITNESS: The drayage was from our warehouse on 62nd Street.

Exam. WAY: It was before the drayage—before they began to use your warehouse?

423 The WITNESS: That was on 3rd and Santa Fe Avenue.

Exam. WAY: That was from the railroad freight house?

The WITNESS: Yes.

Exam. WAY: To where?

The WITNESS: To their members.

Exam. WAY: To the delivery point.

The WITNESS: Yes, sir.

Q. (By Mr. TAYLOR) That was from the local Santa Fe Depot address?

A. Yes, sir, 3rd and Santa Fe Avenue.

Exam. WAY: Is there a question pending?

Q. (By Mr. TAYLOR) What was the date of your next contract, if you had another contract, or pertaining to the drayage charges from your warehouse?

A. You mean as to this one on June 4th?

Q. Yes, is that your last contract?

A. No, there is one since then.

Q. Well, that one was—called for how much per 100 pounds?

A. This one called for 15 cents per 100 pounds for unloading and delivery service.

Q. That was June 4, 1942?

A. Yes, sir.

Q. And that contract was in existence until when?

A. (No response.)

Mr. Gordon: I will see if we can assist the witness
424 by checking this file if the Examiner will permit us to interrupt at this moment.

The Witness: The next contract or agreement was dated April 28, 1944.

Q. (By Mr. Taylor) And what were the cartage charges provided for in that contract?

A. The drayage and unloading was 18 cents.

Q. Now, were all those contracts to which you have referred executed by and between you and Mr. G. A. Olson?

A. That is the only contact I had. Each time I would talk with Mr. Olson about it, he could never tell me "Yes" or "No". He always had to wait until the Board of Directors met, so he said.

Q. That is what Mr. Olson told you?

A. Yes, sir.

Q. Did you ever have any conversation in connection with any of those questions, any conversations with Mr. Colyear, the Association's former president?

A. No, sir.

Q. Did you ever have any conversations with Mr. Ernst, its secretary and treasurer?

A. No, sir.

Q. Did you ever have any conversations with any of the directors or other officials besides Mr. Olson of the Association?

A. No other, except Mr. Sol Smith. I believe he
425 was—when this last contract was agreed on, I believe Mr. Sol Smith was down to our office.

Q. Going back to the verbal contract for handling freight—that was a written contract, wasn't it, June, 1942? The verbal contract was 1940, wasn't it?

A. They were all verbal, were just confirmed by letter from Mr. Olson.

Q. Oh, I see. Well, going back to this June, 1942, contract, which provided for 15 cents cartage charge, did you also have an agreement that provided for a handling charge at the warehouse in addition to that?

A. No. That included handling.

Q. That included handling?

A. Yes, sir.

Mr. Gordon: I just called counsel's attention again to the correspondence file, just the part of the file brought here by Mr. Olson in response to the subpoena, and I believe all the letters to which the witness has referred are, in effect,

constitute contracts, has one provision for an acceptance by the party receiving the letter, and when so filed, I believe, would be a written contract.

Q. (By Mr. TAYLOR) Now, with respect to the letter-contract just mentioned by Mr. Gordon, the first contract that you had, October 11, 1940, I will ask you, Mr. Butler, does your signature appear thereon under the writing,
426 "Accepted by Pacific Transporation & Warehouse Company"?

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. Now, in connection with the July 4, 1942 contract, it is evidenced by this copy of what purports to be a letter in the nature of a contract, that is, the copy which you now see is unsigned, is it not?

A. Yes.

Q. Do you recall ever having signed the original of that or any other copy of that particular contract?

A. All the confirmations were sent in that way, and they were all accepted and signed, and a copy mailed to Mr. Olson, and we kept a copy.

Q. Well, you didn't sign this one, then, did you?

A. Not this copy, no, sir.

Q. Thank you. Now, in connection with the business at your warehouse during the past two years, as I understand it, all carloads for P. C. W. A. which do arrive from Chicago go to your warehouse. What portion of the tonnage in those cars go to California Shipbuilding Corporation at Terminal Island?

A. At the present time I believe we are averaging about 1,000 pounds per day for Calship.

Q. I believe my question referred to the past two years, Mr. Butler.

427 A. In 1943 I believe Calship had about the same amount of freight that went to P. C. W. A., either the P. C. W. A. or the Hardware & Metals had, but divided about equally between the three.

Q. Now, as to the P. C. W. A. tonnage itself, as to distribution to all Los Angeles members, do you mean to say that the California Shipbuilding Corporation's percentage of the total P. C. W. A. tonnage was approximately the same as the total tonnage, or for all other Los Angeles members?

A. Yes, sir.

Q. Then your answer, insofar as the year 1943 is concerned, is that California Shipbuilding Corporation tonnage

was one-half, or approximately one-half of the total tonnage delivered at Los Angeles by your warehouse? Is that correct?

A. That is correct.

Mr. GORDON: I submit that for that to be of any help to the Commission and value in the record, we ought to have accurate figures. The witness has the tonnage figures. If they are important, let us get them correctly.

Exam. WAY: I would like to have them introduced, if you have them.

Mr. GORDON: We are furnishing them for the witness in court.

Mr. TAYLOR: I have asked the witness, "approximately". The witness is qualified. He is president of that
428 warehouse corporation. He is qualified to testify as to the approximate volume of tonnage handled, and he has so testified.

Exam. WAY: Well, he is giving us a percentage. Do you know the figure here, the volume of tonnage?

The WITNESS: I don't have them, no.

Exam. WAY: You don't have them?

The WITNESS: No.

Exam. WAY: You don't know?

The WITNESS: No.

Exam. WAY: All right. Proceed.

Q. (By Mr. TAYLOR) Well, what is the general nature of the freight received by the California Shipbuilding Corporation at your warehouse?

A. They receive practically all the smaller items that go in a ship, including all the hardware items.

Q. Well, does their tonnage, and has their tonnage during the past two years, or since their membership to the Association, include substantially the following:

Machinery parts, pipe valves, tubing coils, fittings, tees, flangers, pails, bolts, rails, life preservers, binnicoles, benches, steel cylinders, fire element equipment, search lights, filter pumps, charcoal, transmission machinery, conductivity cells, steel doors, gongs, ladders, steel bars, springs, *et cetera?*

A. Yes, sir.

429 Q. In connection with the Calship freight, how is that handled to your warehouse? After unloading the cars from Chicago, do you reassemble the cars for Calship?

A. We don't any more. We did in 1943.

Q. You didn't in 1944?

A. No, not in 1944.

Q. And at that time was the handling charge for the transfer from the original car to your warehouse and then to the other car, or did you handle it three times or twice?

A. The unloading charge was six cents, and the assembly and reloading was six cents per hundred pounds.

Q. And can you state with more certainty the period? You say in 1943 you did that. Did you have that contract in existence during the entire year of 1943?

A. Not this latest contract. I forgot the agreement in 1943, to get the figures.

Q. How have you been handling Calship tonnage since the discontinuance of that unloading and reloading service? Have they taken delivery of their freight right at your warehouse?

A. No, we handle it to the harbor on trucks.

Q. On your own trucks?

A. Yes, sir.

Q. You don't handle it any more by rail?

A. No.

Q. You did continue to handle Calship tonnage?

430 A. We had a part of it.

Q. As far as P. C. W. A. freight is concerned?

A. Yes, sir.

Mr. Taylor: I believe that is all, Mr. Butler.

Cross Examination.

Q. (By Mr. Ames) Mr. Butler, was your company in the capacity of transportation? Are you just a local cartage company, or do you do over-the-road work?

A. We are practically local between this commercial harbor area and Los Angeles.

Q. Are you certified as a common carrier by the Interstate Commerce Commission?

A. Yes, sir.

Q. Are you a freight forwarder?

A. No, sir.

Q. Just a trucking operation?

A. Have a transportation company and warehouse.

Q. What is the area of your distribution? Does it cover just Los Angeles or do you go out beyond Los Angeles in distributing this freight?

A. We distribute freight within the Los Angeles commercial area and the Los Angeles Harbor commercial area.

Q. Just those two places?

A. Yes, sir.

Q. You don't handle any freight outside of that
431 area through your warehouse?

A. No, sir.

Mr. AMES: That is all I have.

Exam. WAY: We will take a recess until two o'clock.

(At 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

432 After recess.

(The hearing reconvened at 2:00 o'clock p. m.)

Exam. WAY: All right, gentlemen, come to order, please.

O. C. BUTLER, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination.

Q. (By Mr. GORDON) What, in general, is the nature of your business, Mr. Butler?

A. General trucking and warehousing.

Q. And do you perform services in the distribution of pool car shipments for various consolidators?

A. We do for various consolidators, not very many of them.

Q. Approximately how many?

A. About four.

Q. One of those is P. C. W. A.?

A. (No response.)

Q. Is that right?

A. That is right.

Q. And now one is the Hardware & Metal Carloading Association?

A. Yes, sir.

Q. Do you know whether or not that is an Association of shippers similar to P. C. W. A.?

A. I understand it is exactly the same.

Q. And then you have two others. Are those
433 others Associations, or are they forwarders or individuals, or what are they?

A. They are forwarding companies.

Q. Do you also perform any service in assembling and consolidating shipments for carload shipments?

A. Yes, sir.

Q. And you are compensated, is that true?

A. Yes, sir.

Q. In the same manner as you are compensated for the unloading and distribution?

A. Yes, sir.

Q. Is that on a basis of so many cents per 100 pounds?

A. Yes, sir.

Q. In all cases?

A. In all cases.

Q. In rendering the service that you have rendered for the Pacific Coast Wholesalers' Association, do you, yourself, individually, unload these cars and transport the freight shipments from your dock or from the Santa Fe dock to the customer's place of business?

A. I haven't had to yet.

Q. You do employ others who work for you, naturally, that is true?

A. Yes, sir.

Q. What, in general, are the types of work you procure to be done by others?

434 A. We hire truck drivers and checkers and unloaders.

Q. Do you employ anyone to do any billing for you or clerical work of any kind?

A. We have clerks, yes, sir.

Q. And am I correct in understanding that the nine cents per 100 pounds and later the 15 cents, or whatever the figure was, per 100 pounds paid to you—I believe 18 was the final figure—paid to you by the P. C. W. A. as the overall charge you make to them for that service?

A. Yes, sir.

Q. Did you ever make any reports to the P. C. W. A. or to any of those for whom you rendered a similar service of this breakdown of cost in rendering that service?

A. I have made an estimate at the breakdown when the cost became too near the revenue, in order to get an increase in the revenue.

Q. In other words, you made these estimates of what it was costing you in order to negotiate a contract for a higher rate of compensation, did you not?

A. Yes, sir.

Q. You didn't furnish those estimates to P. C. W .A. and to the others that you were dealing with, did you?

A. No, sir.

Q. That was for your own information?

A. That is right.

435 Q. And have you been served with a subpoena in this case to produce your records in detail, the cost to you of performing that service for P. C. W. A.?

A. No, sir.

Q. And you do not have any such records here?

A. No, sir.

Q. Now, Mr. Butler, when you began your work, as evidenced by the letter referred to this morning, October, 1940, you were charging, as I understand it, nine cents per 100 pounds?

A. Yes, sir.

Q. And you later increased that to 15 cents per 100 pounds?

A. Yes, sir.

Q. And later you increased that to 18 cents per 100 pounds?

A. Yes, sir.

Q. Why were those increases made necessary? Or, why were they made?

A. They were made for several different reasons. The labor situation was the main reason, and that first increase was caused by the fact that we had to unload the cars when that second agreement went into effect. The third—

Q. The main reason for that was that your own cost for labor and clerical service increased during that period, was it not?

A. Yes, sir.

Mr. GORDON: That is all.

Exam. WAY: One question I want to ask, and that
436 is this: You have defined the particular concerns that you are performing a service for. You say there are other associations of shippers that are exactly the same as P. C. W. A. in the handling of business for the forwarder. How do you distinguish the difference between these respective concerns?

The WITNESS: The only way I have of distinguishing the difference is the—knowing the organizations, how they operate. The freight is practically the same.

Exam. WAY: You don't know whether they are associations or forwarders, do you?

The WITNESS: That wouldn't make any difference to us.

Exam. WAY: I am asking you the question.

The WITNESS: That wouldn't make any difference to us.

Exam. WAY: Do you know of any difference between the character of the concerns, and if so, how do you know?

The WITNESS: The only reason I know is because they have told me.

Exam. WAY: One has told you it was an association and somebody else has told you they were a forwarder?

The WITNESS: Yes, sir.

Exam. WAY: Any other questions?

resentatives in Washington, and such correspondence and billing as has been had in connection with the membership has been had through Mr. Olson's office, 108 West Sixth Street, Los Angeles.

Exam. WAY: Will you give me a list of the members of the Shipper Consolidators Institute?

Mr. GORDON: I will obtain that and furnish it.

Exam. WAY: Are they all located in Los Angeles?

Mr. GORDON: I think they are all located in Los Angeles.

Exam. WAY: I will appreciate it if you give me a membership list.

Mr. AMES: Do you have a separate office?

Mr. GORDON: No, we do not have a separate office. It is handled by Mr. Olson and handled out of his office in the Central Building.

Mr. AMES: Do they have a telephone listing?

Mr. GORDON: They do not.

Mr. TAYLOR: Who are the officers of the Institute?

Mr. GORDON: I will be glad to supply that to you. I think it is wholly immaterial, but we will supply the information.

465 Mr. TAYLOR: I submit here Pacific Wholesalers' Association's check No. 74 signed by Elmer J. Jensen and J. H. Ernst, payable to the Shipper Consolidators Institute, in the amount of $1,250.00, dated August 2, 1944, which shows thereon: "Contribution of $250.00 each of months February, March, April, May, June, 1944."

Now, the check was endorsed by rubber stamp only, which item reads: "Pay to the order of the Bank of America, the Shipper Consolidators Institute."

The question is who presented that check to the bank for payment or for cash of the amount shown thereon?

Mr. GORDON: I don't think that the witness can answer that question and I don't believe that I can. I will be glad to get that information and stipulate. It was probably handled by Mr. Olson.

Q. (By Mr. TAYLOR) Mr. Smith, was the payment of this $250.00 each month, beginning February, 1944, approved by an action of the board of directors?

A. Only by this motion that you read, that you had me read to you.

Q. Well, it was presented to the members at large to get their approval for such payment?

A. No, sir, not that I know of.

Mr. TAYLOR: Thank you. That is all.

Q. (By Mr. GORDON) In that connection, Mr. Butler, in making distribution for P. C. W. A., wasn't it a fact that all of the shipments that you handled were at all times for a limited group of consignees, limited in number?

437 A. Yes, we delivered it to the same people all the time.

Q. And was the same true of the Hardware Metals Consolidated Association?

A. Yes, sir.

Q. Now, with respect to distributing for the ones that you called forwarders, was that true?

A. No, they delivered to everybody.

Q. And was that the basis that you distinguished between them? You considered one was an association and the other was a forwarder for hire?

A. That would have a lot of weight on the way I made up my mind.

Q. In addition to what was told to you?

A. In addition to that, yes, sir.

Exam. WAY: Who pays for your services?

The WITNESS: Pacific Coast Wholesalers' Association.

Exam. WAY: How do they pay you?

The WITNESS: They pay—send us a check about three times a week.

Exam. WAY: And the check is signed by whom?

The WITNESS: The checks are signed by G. A. Olson, and Mr. Matthews—and I forget his initials.

Exam. WAY: Well, isn't it signed by Pacific Coast Wholesalers' Association by one of these gentlemen?

The WITNESS: Yes.

438 Q. (By Mr. GORDON) May I inquire, Mr. Butler, whether the checks that you received bear the imprint of the name of Pacific Coast Wholesalers' Association on it and purports to be their check signed on their behalf by Olson or Matthews?

Exam. WAY: He just got through saying that was the way it was signed.

Mr. GORDON: I beg your pardon.

Exam. WAY: That is what he said. That was his answer. Any further questions?

Mr. GORDON: I have one other question.

Q. (By Mr. GORDON) Mr. Butler, I will ask you to state whether the methods that you observed of charging in cents per 100 pounds is the usual and customary method of charging for the assembly and consolidation of freight for

Q. (By Mr. AMES) Who kept the accounts of the
466 Shipper Consolidators Institute? Also their bank accounts.

A. I cannot say that.

Q. Do you know whether any of these other concerns actually contributed?

A. I do not, sir.

Q. Who was President or other officers of the Institute?

A. Counsel stipulated they were going to give that to you. I can't give it to you.

Q. Well, if it will come in, all right. I won't ask you.

(Witness excused.)

(Short recess taken.)

Mr. TAYLOR: Call Mr. J. H. Matthews.

Mr. GORDON: Before calling the next witness, I would like, if I may, to introduce for the record in the form of exhibits copies of the documents identified by Mr. Weyman, and Mr. Hardwick, with reference to the Gasket Supply House and Dixon Valve & Coupling Company, respectively.

The documents, I believe, were read into the record by those gentlemen. However, I have copies for the convenience of the record and the Examiner and the parties. I have given copies to counsel. I want to first offer the document, two sheets, bearing the signature of O. W. Weyman.

Exam. WAY: That will be marked Exhibit 18.

(Exhibit No. 18, witness Weyman, marked for identification.)

467 Mr. GORDON: And the next one, the documents identified by the witness P. M. Hardwick, relating to the Dixon Valve and Coupling Company, consist of two sheets.

Exam. WAY: Exhibit No. 19, consisting of two sheets, one signed by Charles R. Simmons and the other by P. M. Hardwick.

Mr. GORDON: Both relate to the Dixon Valve and Coupling Company.

Exam. WAY: Any opposition?

(No response.)

Exam. WAY: They are received.

(Exhibit No. 19, witness Hardwick, received in evidence.)

Mr. GORDON: I have recorded at the top as received the number of the exhibit, and the name of the witness by whom they were introduced, Weyman in one case, and Hardwick in the other. That is all that I have. Thank you.

carload shipments or for the unloading and distribution, if you know?

A. That is the only way I have ever charged anything, and that is the only way I have ever known any one else to make their charges.

Q. Different from the general way that others have rendered similar service to that you have described that you are rendering?

A. Yes, sir.

Mr. GORDON: That is all.

Q. (By Mr. TAYLOR) Mr. Butler, does Mr. Olson own any stock in your warehouse company?

439 A. No.

Q. Does your company issue checks or make payments of any kind to Mr. Olson?

A. Not to Mr. Olson, no.

Q. Does it make checks or payments to anyone else connected with the P. C. W. A.?

A. No, sir.

Mr. TAYLOR: That is all.

Q. (By Mr. GORDON) Did you ever issue checks and make checks payable to the P. C. W. A.?

A. For freight charges we have.

Q. Isn't it a fact that all of the payments that you make are made payable to P. C. W. A.?

A. All the freight payments we made are made to the P. C. W. A. for freight bills which we, in turn, collect from the members.

Exam. WAY: Now, let me understand just precisely how you operate, or are you going into the subject in detail, Mr. Gordon?

Mr. GORDON: Yes, we expect to go into that very fully through our witnesses.

Exam. WAY: All right.

Mr. GORDON: That is all I have.

Mr. TAYLOR: That is all.

(Witness excused.)

Mr. TAYLOR: Mr. Anderson.

440 H. B. ANDERSON, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. TAYLOR) In continuation of your examination of the records of Mr. G. A. Olson and Mr. Sol Smith, which were produced at this hearing upon subpoena, will

you please state what papers came to your attention relevant to the purpose of this hearing?

A. Since this morning Mr. Sol Smith has prepared and given to me a statement headed "Pacific Coast Wholesalers' Association", showing the receipts and disbursements made into and through his bank account in the Security First-National Bank, Adams and Figueroa Streets. The receipts are from December 20, 1943 through January 15, 1945, and show the source, amount, and what for. The disbursements are from the period, December 20, 1943 through January 15, 1945, and show to whom made, date made, and what for, and the amount of each one.

On the bottom of this statement I have shown the bank balance as reflected by the bank statement that Mr. Smith presented here today, showing a bank balance, January 3, 1945, $1,647.69. I would like to submit this as an exhibit for the record.

Mr. GORDON: I stipulate that the document may be received in evidence and identified.

Exam. WAY: It may be received in evidence, Exhibit 12.

441 (Exhibit No. 12, witness Anderson, received in evidence.)

The WITNESS: In reviewing Mr. Sol Smith's records I found a letter in there from the Salt Lake Hardware Company, Salt Lake City, dated January 31, 1944, addressed to Mr. Sol Smith and signed by the Salt Lake Hardware Company, H. H. Ellsworth, traffic manager, which contains certain information I think should go in this record, and I would like to read this letter into the record together with Mr. Smith's reply dated February 19, 1944.

Mr. GORDON: May I see it, please?

(Document handed to Mr. Gordon.)

Mr. GORDON: I have no objection to the documents being made matters of record and introduced in evidence.

Exam. WAY: Can you file that as an exhibit?

Mr. GORDON: They are office file, and they will be available for copies.

Exam. WAY: Read it.

The WITNESS: Letter dated January 31, 1944, addressed to Sol Smith, reads:

"We have received copy of the By-Laws and Articles of incorporation of the Association and are returning the letter of acceptance properly executed to your office in the stamped return envelope.

"Under Section 20, Article V, headed 'Annual Meeting', we note that the date is set for the second
442 Wednesday of January of each year, and were just wondering if the annual meeting had been passed this year, in view of the fact that the Association was incorporated on the 20th of September, and we were not advised of any such meeting, or just what has happened. Since the By-Laws provide for such a meeting, we assume that if it was not held, some provision was made therefor, and we were just wondering, in view of our position as an active member of this organization if we should not have been notified. We certainly feel that the move which has been taken to incorporate the Association is a splendid one, and justifies our faith in the Board of Directors. However, we do feel a little 'out on a limb' when we realize all the activity that has taken place since last September, and then suddenly have the new Articles of incorporation and By-Laws thrown at us without warning and with the request that we sign and accept it without having been forewarned or given an opportunity to even express an opinion concerning the laws by which we were to be governed.

"We feel quite keenly on this subject and the fact that we have not jumped to a hasty conclusion concerning the attitude of the executive office concerning the outlying districts of the organization, and that there is a logical explanation for these actions.

"There is one other item which we are not clear on,
443 and that is paragraph C of Section 6, concerning the revolving fund, which reads in part as follows:

" 'For the purpose of providing working capital, there shall also be paid to the corporation by each member five cents per 100 pounds of all freight handled by the corporation for and on behalf of such member, the proceeds of which shall be used as a revolving fund for a period not to exceed two years.'

"The literal meaning of this paragraph appears that a revolving fund shall be used for not exceeding two years, and that to provide such a revolving fund, all members shall pay five cents per 100 pounds of all freight handled for an unknown and indefinite period. Although we feel quite certain that this is not the intent when the Articles were drawn up.

"We trust that we may have the benefit of your views.

"Yours very truly, Salt Lake Hardware Company, by H. H. Ellsworth, Traffic Manager."

Mr. Sol Smith's reply, dated February 19, 1944, reads:

"My Dear Mr. Ellsworth:

"I sincerely hope you will pardon my delay in replying to your letter of January 31.

"Your questions are quite in order, and I can well understand your feeling. We have been neglectful in our obvious duty of keeping you informed of the developments more fully. There is no excuse to offer other than the one you already know so well. In these times of stress we have altogether too much work to do and too little time to do it in, too few people to help us, and just too much to worry about.

"I will say, however, in justification for my admitted failure to carry on the affairs of this organization in the manner that I know should be done, that the Board of Directors have been sympathetic and assured me that they did not believe our members minded the inattention to detail under the circumstances so long as they continued to get good service on their freight and the checks for savings continued to go out on time.

"With kindest regards and hoping that I may have the pleasure of meeting you personally in the near future, I am, Yours very truly, Pacific Coast Wholesalers' Association, Sol Smith, Executive Secretary."

In this examination I also find a letter from Mr. G. A. Olson, general manager, to Mr. Sol Smith, dated January 28, 1943, and Mr. Olson's reply dated February 1, 1943, which has to do with the solicitation of business, which I would like to record into this record.

Mr. GORDON: I would like to examine this, please, if the Examiner please.

(Document handed to Mr. Gordon.)

Mr. GORDON: I will stipulate that the letters referred to by the witness are either the original or copies of the letters exchanged, that the file also has attached to it a letter under date of January 5, addressed to C. C. Colyear, president, and to T. A. Walsh, vice-president, and to J. H. Ernst, secretary and treasurer, and purports to be signed by Sol Smith, secretary, and also a typed carbon copy of a list of members of the Pacific Coast Wholesalers' Association, which, I understand, was sent by Mr. Smith to the men addressed, and I am informed that a copy of a similar letter as of January 5 was sent only to the three men to whom it was directed, C. C. Colyear, T. A. Walsh, and J. H. Ernst.

I have no objection to these being offered in evidence. These very documents appear to be copies, and we have others in our file.

The WITNESS: I offer them as an exhibit.

Exam. WAY: Marked Exhibit 13.

(Exhibit No. 13, witness Anderson, marked for identification.)

Exam. WAY: What is your intention to show by this Exhibit No. 13?

The WITNESS: The extent to which they are soliciting members.

Mr. GORDON: I stipulate that the letter identified by the witness is a true and correct copy of a letter that was sent by Mr. Olson as general manager for P. C. W. A. on August 18, to W. A. Nourse at Seattle, and stipulate that this was the copy that was sent to Mr. Sol Smith by Mr.
446 Olson and that this copy may be physically identified and received in evidence.

Exam. WAY: What is the purport of that statement? Just in general terms, what is your intention to show?

(Handing documents to the witness.)

The WITNESS: This is intended to show that there was considerable question in the mind of the general manager about the membership of one firm that was proposed, and there was some thought given trying to get them into the membership without being voted on by the Board of Directors.

Exam. WAY: It will be marked Exhibit 14; without objection it is received.

(Exhibit No. 14, witness Anderson, received in evidence.)

Mr. AMES: I wonder if Mr. Gordon would stipulate with me that the figures on Exhibit 12, which I understand were submitted by Mr. Smith, do not reflect any freight collections from the members under the heading of "receipts". That is, that these amounts are not amounts involved in the so-called freight fund or freight account.

Mr. GORDON: I will be glad to so stipulate after I check and ascertain the correctness of that. Can we go into that a little later, Mr. Ames?

Mr. AMES: Yes.

The WITNESS: I also have here a letter to Mr. Sol Smith from Mr. G. A. Olson, general manager, addressed to Mr. Sol Smith, executive secretary, dated January 19,
447 1945, regarding a savings check in the amount of $75.54, made payable to Moore Machinery Company and Mr. Sol Smith's letter to the Moore Machinery Com-

pany, Los Angeles, dated January 26, 1945, enclosing the check, and I would like to offer these two letters, if agreeable, as an exhibit, to show the extent to which solicitations for business is undertaken by the general manager.

Mr. GORDON: It is stipulated that the letter from Olson to Sol Smith, dated January 19, 1945, was signed and sent by Olson to Smith, and that the copy of the letter dated January 26, 1945, addressed to Moore Machinery Company, 7876 Santa Fe Avenue, Los Angeles, is a true and correct copy of a letter enclosing a check for $75.54, which was sent by the Pacific Coast Wholesalers' Association under that date by Sol Smith, executive secretary.

Also stipulated that the documents in question may be offered and received in evidence.

The WITNESS: I offer them as evidence.

Exam. WAY: They are received and marked Exhibit 15.

(Exhibit No. 15, witness Anderson, received in evidence.)

The WITNESS: I have only one more letter, which I would like to offer at this time, and that is a letter from Mr. G. A. Olson, traffic manager for the Pacific Coast Wholesalers' Association, addressed to Mr. Sol Smith, executive secretary, and is dated Seattle, Washington, May 4, 1942,
448 and has to do with requesting that he send him a check for $500.00, or deposit $500.00 in his expense account to cover his expenses up on a trip there, which is offered to show the extent to which the general manager solicits business.

Mr. GORDON: It is stipulated that the letter is a letter sent by Mr. Olson to Mr. Smith under the date shown, and that this document, if desired, may be offered and received in evidence.

Exam. WAY: Received in evidence as Exhibit 16.

(Exhibit No. 16, witness Anderson, received in evidence.)

Mr. TAYLOR: That is all.

Exam. WAY: Cross examine.

Cross Examination.

Q. (By Mr. AMES) Mr. Anderson, on your Exhibit 12, are you familiar with the details of any of those figures, or was that simply presented to you by Mr. Smith?

A. This was presented by Mr. Smith, but I think from the investigation I have made and the discussion I have had with Mr. Smith, I may be able to explain it, but Mr. Smith is present and perhaps he could do that better than I could.

Mr. AMES: Which would you prefer, Mr. Examiner, that I ask Mr. Smith these questions, or—

Exam. WAY: I think perhaps you should ask Mr. Smith about it.

Mr. AMES: I understand that later there will be a
449 stipulation to the effect that the list indicated as "receipts" either from membership fees, collections, or the so-called legal expense collection that was made out of freight charges are not reflected in the so-called freight account? In other words, if my understanding is correct, it is to a certain amount per hundred pounds out of the freight charges and transferred to this to cover legal expenses for the A & D case. Maybe I had better ask Mr. Smith.

Exam. WAY: All right. You are excused.

(Witness excused.)

SOL SMITH, re-called as a witness, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. AMES) I am just trying to make clear, Mr. Smith, that the figures in Exhibit 5 are not figures which have anything to do with this so-called freight account, out of which Mr. Olson is paid?

A. No.

Q. I am correct in that understanding?

A. Yes.

Q. Now, under the "disbursements", you have listed here "shipper consolidators institute". You have one payment $1,250.00, and one of $250.00, and two additional $250.00, indicated as dues. What is the "shipper
450 consolidators institute?"

A. Well, that is a group of firms made up very similar to ours, who are sharing in the costs of certain legislative expense, *et cetera*. Out of that fund there is a man retained in Washington.

Q. If I understand it, you pay monthly dues of $250.00 to that organization?

A. That is correct, sir.

Mr. AMES: I think that is all. I just want to make clear as to the freight account.

Mr. TAYLOR: Just a minute, please.

Exam. WAY: Are you going to examine him with respect to these items?

Mr. TAYLOR: No, not with respect to those items. (Handing documents to the Examiner.)

Exam. WAY: I wish you would take this exhibit and explain to me what those items are for, but don't go into detail.

The WITNESS: The first item of $300.00 for Hugh Gordon. These are both December 20, 1943. $700.00 for Gus Olson for traveling expense.

Exam. WAY: I want a little bit more about it than just that. What were the traveling expenses for, attending conferences or what?

451 The WITNESS: That was a hearing before the Senate Committee in Washington.

Exam. WAY: On behalf of the P. C. W. A.?

The WITNESS: Total expense income, as I remember, somewhere around—it was—I would hesitate to say—about $1500.00, I would say.

Mr. GORDON: The payment to me was fees, and the payment to Mr. Olson was for the trip taken by him and by me in November, 1943, to Washington, D. C. to appear before the Senate Committee on Interstate Commerce regarding the proposed amendment of the Forwarder Act and regarding division payable to forwarders.

Exam. WAY: Next?

The WITNESS: H. M. Burgwald, $150.00 under "insurance agent" and that is premium on a bond.

Next item, January 27th, National Industrial Traffic League, $60.00. It is for membership in that league.

Next is G. A. Olson, $300.00, traveling expenses, which I presume—which I could nearly stipulate were paying for it on the Washington trip.

February 15th, Hugh Gordon, $700.00, for legal services.

Exam. WAY: In connection with P. C. W. A.?

Mr. GORDON: That was also in connection with the Washington trip.

The WITNESS: Yes. March 21, E. B. Roloff, income tax service $10.00.

452 April 7, Multi-letter Company, $26.14, mimeograph work for the Association.

Mr. OLSON: What mimeograph work was that?

The WITNESS: I can't state how much mimeograph work. It was having to do with the getting out of either—something about notices of meetings—I haven't set up here.

Mr. GORDON: Do you know whether or not that had to do with mimeographing the copies of the articles of incorporation and the by-laws and the form letters that were sent to members which were identified this morning?

The WITNESS: I am not sure. The bill was in the file there.

MR. GORDON: All right.

Exam. WAY: All right. Proceed.

The WITNESS: The next is July 15, Collector of Internal Revenue, $50.00, capital stock tax.

April 7th, G. A. Olson, $400.00, expenses, traveling.

Exam. WAY: Same trip?

The WITNESS: Might have been the—wasn't on the same trip, or upon a trip made upon his return, I believe, into the northwest.

Exam. WAY: On behalf of the Association?

The WITNESS: Yes, sir. August 2nd, Hyams & Meyers, $50.00, premium on freight bond.

August 2nd, Shipper Consolidators Institute, $1,250.00. Five months dues at $250.00 per month.

453 Exam. WAY: You have already explained that. Proceed.

The WITNESS: September 14, Hugh Gordon, $250.00, legal services.

Exam. WAY: Same services referred to before?

The WITNESS: I can't say as to that. That might have been in connection with the incorporation.

MR. GORDON: If counsel for the Commission will accept my statement, I am sure that was in connection with my services incorporating the company and preparing the articles and by-laws, which bill was rendered to the P. C. W. A.

The WITNESS: September 30, G. A. Olson, $1,000.00, Senate hearing expenses.

October 9, Shipper Consolidators Institute, $500.00, two months dues at $250.00 each.

November 17, Samuel J. Wettrick, $500.00, legal services.

Exam. WAY: For what?

The WITNESS: That was also in connection with the Senate hearing. Well, it was done in Washington. It was a Washington case—

MR. GORDON: If I may be permitted to interpose there, I am sure that was paid to Mr. Wettrick in connection with services rendered him in connection with the A & D case, so-called, before this Commission.

Exam. WAY: So-called A & D case.

The WITNESS: Assembly and Distribution case.

454 MR. GORDON: M2180, Docket number, before this Commission, concerning the legality of certain assembly and distribution rates.

Exam. WAY: 43MCC527.

The WITNESS: November 27, Shipper Consolidators Institute, $250.00, dues.

December 28, National Industrial Traffic League, $50.00, dues.

December 28, H. M. Burgwald Company, $150.00, bond premium.

January 9, Shipper Consolidators Institute, $250.00, dues—

Mr. GORDON: Just a moment. Was that bond premium payable to Burgwald on Mr. Olson's bond?

The WITNESS: Yes.

Mr. GORDON: Personal bond?

The WITNESS: It was a personal bond on which we pay the premium.

Mr. GORDON: Guaranteeing the Pacific Coast Wholesalers' Association against any loss through handling of the funds by Olson?

The WITNESS: Correct, and the same item on January 15th, (handing paper to the court).

Exam. WAY: Now, under the heading of "Receipts" here you have certain items of moneys, and these are items of receipts that were transferred from the S. & S. account?

The WITNESS: Sol Smith.

455 Exam. WAY: Another P. C. W. A.?

The WITNESS: Yes, sir.

Exam. WAY: They are marked A & D. Now, is my understanding correct that the moneys were transferred from the Sol Smith account, which, in effect, I understand to be the membership account?

The WITNESS: Well, if I may hold this up—I believe if I could look at that document, I think it would verify—there were four payments into the account before or about—just previous to the time that the Association was incorporated, and those were deposited in the Sol Smith general fund.

Exam. WAY: Those were the ones you explained yesterday.

The WITNESS: Yes, sir, and you will notice as a first entry up there somewhere around $1,445.00 and some cents—I don't know what it is—which is a total of four checks which had previously been carried in the Sol Smith general fund, and they were transferred to the corporation's—or the Association's funds.

Exam. WAY: Now, is that the balance of that fund?

The WITNESS: No, sir.

Exam. WAY: I understood yesterday that you had transferred the balance of that fund.

The WITNESS: No they were transferred to a separate item, and you will find on a previous item in 1944, $17.97.

That closes out the Sol Smith general fund kept in
456 his books and his bank account, all moneys held by him, but which was the property of Pacific Coast Wholesalers' Association and individuals—

Exam. WAY: Identify those particular items (handing papers to the witness).

The WITNESS: Let's see. Under "Receipts" the first item is December 20, 1943. These are receipts, sir.

Exam. WAY: That is right.

The WITNESS: From Sol Smith (A & D), $1,444.71, transferred from Sol Smith account, July, August, September, October collections.

Exam. WAY: What are the collections? Membership accounts?

The WITNESS: No that is the A & D account. Perhaps you don't—you are not exactly clear on the A & D?

Exam. WAY: I know what the A & D case is, but how did you get the money, and who paid it?

The WITNESS: One cent per a hundred pounds during the period was deducted from savings of members and was put in the A & D account, and at the end of each month that accumulated money was transferred to this period to Sol Smith and put in his account, and after that, sir, that went directly into the corporation account. And you will find some other receipts in there. Is that clear now?

Exam. WAY: Yes. All those A & D accounts are the same thing?

457 The WITNESS: Yes, sir.

Exam. WAY: All right.

The WITNESS: On February 11th P. C. W. A. (A & D) $686.12. That was November collections.

February 15, the same thing, $713.60. December collections.

March 15, Yakima Hardware, $200.00. Membership fee.

July 17, J. E. Haseltine Company, $200.00, membership fees.

July 17, P. C. W. A. (A & D) $1,267.54. That covers January, February, March and April collections.

Exam. WAY: On the A & D?

The WITNESS: Yes, sir.

Mr. TAYLOR: Well, pardon me if I interrupt here. Isn't it a fact, Mr. Smith, that those expenditures were paid from the one cent per one hundred pounds assessment for legal fees?

The WITNESS: Those A & D's? Yes, sir. But the Commissioner wants me to read these into the record, which I am happy to do.

Mr. GORDON: May I make a statement that will help to clarify it?

We will show by other testimony that payments for Mr. Smith, labelled as A & D, were not all related to the A & D case, strictly speaking. They are the shipments that were collected from the members under a special assessment for legal and other expenses. Originally it was two cents
458 per one hundred pounds; later it was made one cent per one hundred pounds. And as that money was collected, it wa sent over to Mr. Smith for deposit in the general fund of P. C. W. A.

Now, when Mr. Smith received it, I think he took it primarily for the A & D case and so labelled it.

(Discussion off the record.)

The WITNESS: July 17 (A & D), $353.56, May collections.

August 4, P. C. W. A. (A & D), $330.96, June collections.

Exam. WAY: I don't think you need to read all those items. Just state what they are. Lump them together, the rest of the collections.

The WITNESS: April 11, Sol Smith (general fund) $729.62. In explanation, that is the amount on hand in the general fund of P. C. W. A. carried on Sol Smith's books and in his account.

Exam. WAY: That is the account that was turned over at the time of the incorporation?

The WITNESS: Yes, sir, and that closed all moneys into the P. C. W. A. bank account.

On September 15th, Oregon Marine Supply, $200.00, membership fee.

September 15, Puget Sound Bridge and Dredge Company, $200.00, membership fee.

September 15, Seattle Hardware Company, $200.00, membership fee.

September 15, Shields Harper, $200.00, membership fee.

September 15, P. C. W. A. (A & D) $340.81, July collections.

459 October 11, P. C. W. A. (A & D), $390.67. August collections.

November 30, P. C. W. A. (A & D), $401.78, August collections.

January 11, 1945, Marshall Wells Company, $200.00, membership fee.

Well, the last two items:

January 11, P. C. W. A. (A & D) $425.06, October collections.

January 15, P. C. W. A. (A & D) $349.19, November collections.

Exam. WAY: All right.

Q. (By Mr. GORDON) Mr. Smith, I will ask you to state whether or not the explanation which I offer is correct, that wherever you have indicated an item received from P. C. W. A. and have designated it "A & D", it refers to the amount of money collected during the months mentioned under the special assessment for legal or other expenses?

A. That is correct, sir.

Q. And is it not intended to relate exclusively to the A & D case?

A. No, it was originally the A & D case, and I had an A & D fund set up in my books and I carried that through.

Mr. GORDON: If the Examiner please, I think Exhibit 2, which is a copy of the minutes of the incorporated Association, P. C. W. A. from the earliest date of which we have record down to September 16, 1943—that is, I understand, to be identified in the records as the copy of the minutes that were furnished to the Commission's representatives
460 at an earlier investigation, informal investigation.

I have made photostatic copies of the minutes of the meetings of the unincorporated Association held subsequent to the last date shown on Exhibit 2, being the minutes of the meeting of December 14, 1943, the minutes of February 7, 1944, consisting of two pages, the minutes of July 17, 1944, consisting of five pages, and the minutes of August 8, 1944, which is the last—

Exam. WAY: So Exhibit No. 2, together with this exhibit, purports to show all the minutes of the incorporated Association?

Mr. GORDON: Yes, your Honor, all of which we have in the record, and I don't know whether you want to call this Exhibit 2-A?

Exam. WAY: No, call it Exhibit No. 17

Mr. GORDON: I note from checking with the reporter that I omitted reference to the meeting of December 14, 1943, which is the first of the meetings recorded in this set of minutes, which I offer in evidence.

Exam. WAY: Any objection?
Mr. TAYLOR: No objection.
Exam. WAY: Received.
(Exhibit No. 17, witness Smith, received in evidence.)

Q. (By Mr. TAYLOR) Mr. Smith, I will refer you, please to the minutes of the meeting of the Association held on February 7, 1944. Will you please read for the record the second paragraph, page 2?

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A. (Reading) "It was then agreed, after a discussion and upon motion duly made, seconded and unanimously carried, that this organization would make a monthly contribution of $250.00, beginning with February, to the support of the Shipper Consolidators Institute, which was estimated to be in approximate proportion to the constitutions of other members and supporters of the Shipper Consolidators Institute, based on the volume of traffic consolidated by each of them."

Q. Now, what fund is that charge expendable from?

A. Well, now, let me think—I think that is out of the account which we have treated here as the A & D account.

Mr. GORDON: You mean the general fund?

The WITNESS:

Q. (By Mr. TAYLOR) Have the Board of Directors ever gone on record to the extent of including that specific charge in that fund, or was it assumed as of this meeting that that would be indicative of approval?

A. I so took it, yes, sir.

Q. What is the Shipper Consolidators Institute, Mr. Smith?

A. The Shipper Consolidators Institute is a local organization made up of people similar to the Pacific Coast Wholesalers' Association, such as firms as the one referred to here of the Wholesalers Metal Dealer Carloading Association, and similar firms.

462

Q. Are you an official of that Institute?

A. No, sir. Mr. Olson was directed by the board of directors to act as our representative in that organization.

Q. What other members made up the Institute?

A. I can't tell you, sir.

Q. You have no connection with that Institute, yourself?

A. No, sir.

Q. What is their local address?

A. I will have to check that. It is in the files. I can't give it. Maybe counsel can.

Mr. GORDON: If it is of interest to the Commission, Mr. Taylor, we can develop all that information later.

Mr. TAYLOR: It is of interest.

I notice by this statement here, which is taken from Mr. Smith's records, and which I hand him, it is headed "The Shipper Consolidators Institute" and it shows as the address thereon 108 West Sixth Street, Los Angeles, California. Now, that is the Central Building. That is the same address as Mr. Olson's office, and I am wondering if this bill was issued from Mr. Olson's office or from another office in that building.

Mr. GORDON: Well, as to the bug under the chip, I will make a statement which I will substantiate by other evidence in the record.

463 If the Examiner please, following the trip of myself and Mr. Olson to Washington, at which time the Senate gave consideration to the Bill then pending to amend the Freight Forwarder Act, and as a result of the recommendation of that Committee the House Committee, the Congress did pass the amendatory legislation, extending for 18 months the time within which divisions between forwarders and motor carriers could be continued, Mr. Olson and I returned and reported to the P. C. W. A. that in our judgment the P. C. W. A. and all other shipper consolidators who were interested in that type of legislation or other types of legislation affecting their interests should form some kind of association and contribute funds thereto and prepare as well as we could to meet any attempt to change the Forwarder Act in any manner which might be considered prejudicial to the interests of the shipper consolidators.

Such an Association was formed. Brief articles of Association were drawn up and there were as members, as I recall, approximately five or six—I am not sure just which ones concluded to go in and which ones concluded not to go in—but there was five or six that did so, each of which purports to be a non-profit association of interests consolidating and handling their own freight, and each of those agreed to contribute to a fund to be used in the interests of the Institute, such contributions to be what they

464 deemed reasonable, in view of the total amount of tonnage they were handling for their respective members.

The Institute has by its members meeting together designated Mr. Olson to act on their behalf. Mr. Olson was designated by P. C. W. A. to act on behalf of that Association, and such correspondence has been had with our rep-

J. H. MATTHEWS, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What business are you in, Mr. Matthews?

A. I am in the traffic business.

Q. Are you in the traffic business for yourself or are you employed by someone?

A. I am employed by Mr. G. A. Olson.

Q. And are you employed in Mr. Olson's offices in
468 the Central Building at 108 West Sixth Street, Los Angeles?

A. Yes, sir.

Q. And how long have you been so employed?

A. Since June 1st, 1938.

Q. And what is your title there?

A. I have no title, except one that I assume for Pacific Coast Wholesalers' Association, as traffic manager.

Q. Are you not also office manager?

A. I have supervision of the office in assistance to Mr. Olson.

Q. You supervise the recording of all the receipts and disbursements?

A. I do.

Q. And are you in charge of the payroll in that office?

A. No, sir.

Q. You do not compile the payroll?

A. Why, I issue checks at times.

Mr. GORDON: Pardon me for interrupting. I think possibly the witness misspoke himself. I believe the question asked if he had record of the receipts and disbursements Was that your question?

Mr. TAYLOR: Let the reporter read the question.

(The question and answer were read as follows):

"Q. You supervise the recording of all the receipts and disbursements?

"A. I do."

469 A. The answer is "I do for the Pacific Coast Wholesalers' Association."

Mr. GORDON: I think the witness did not imply that he handled all of the recording.

Mr. TAYLOR: I believe that we have an understanding that he did mean P. C. W. A.

Mr. GORDON: Very well.

Q. (By Mr. TAYLOR) How many employees are there in Mr. Olson's office who devote all or part of their time to P. C. W. A. business?

A. There are 10 in Los Angeles and two in Seattle.

Q. And what are the titles and duties of the 10 in Los Angeles?

A. Well, we have a claim agent, a claim man handling loss and damage claims.

Q. And what is his salary per month?

Mr. GORDON: That is objected to. That goes right into the question that I thought we had agreed to hold in abeyance until we had gotten—

Exam. WAY: Now, is he employed by the Pacific Coast Wholesalers' Association?

The WITNESS: No, sir. By Mr. Olson.

Exam. WAY: He doesn't work for the P. C. W. A.?

The WITNESS: He does P. C. W. A. work, but he is paid by Mr. Olson.

470 Exam. WAY: Answer the question.

(The question was read.)

(The next to the last question was read.)

Exam. WAY: Answer it.

Mr. GORDON: Now, if the Examiner please, the witness is called, as I understand it, to testify concerning P. C. W. A. The evidence thus far adduced developed that the man about whom he is being interrogated is employed as an office employee by Mr. G. A. Olson.

And I very seriously object to the disclosure at this time of fact that may be within this witness' knowledge that we consider the private business of Mr. Olson, and I respectfully urge that that question, if it has become an issue, be reversed until we can get this case further along on its uncontroversial issues, until we can determine just how we can handle the question of Mr. Olson's expenses.

Exam. WAY: The principal question before the Commission in issue here is the operation and control of the Pacific Coast Wholesalers' Association. We are told that this Association is operated by a board of directors with Mr. Olson in charge, and each time we ask a question about Mr. Olson's activities, it is his personal business. Now we are unable to separate these so-called businesses; and each of these matters which are handled by Mr. Olson are presumed to be his personal business. Then, should we

471 assume that the Pacific Coast Wholesalers' Association is also his personal business?

Mr. GORDON: Now, I think it is quite obvious, and I submit that your Honor will recognize that Mr. Olson only claims as his personal business the disposition of the funds

received by him as compensation under the agreement with the P. C. W. A., whereby he receives in the aggregate 15¼ cents per one hundred pounds, for which he is required to maintain an organization and perform certain work.

I submit that does not assume, as suggested, that P. C. W. A. belongs to Mr. Olson, and that that is his personal business, any more than we would assume from the fact that Mr. Butler, who was on the stand and who performs the drayage service, for which he receives 18 cents per one hundred pounds, for which he does not have to account, thereby owns the P. C. W. A., because, if you please, he does exactly the same thing for P. C. W. A. as Mr. Olson does in kind, and he performs the distribution and delivery service, and he employs people to assist him in that.

Mr. Olson performs the supervision of the assembly and distribution of cars, accounts for the billing and distribution of funds, for which he is paid an agreed compensation of 15¼ cents per one hundred pounds.

Now, neither circumstance places Mr. Olson or Mr. Butler in the position of being owner of P. C. W. A. or of running it as his private business. I think it is quite apparent that we step over a very well defined line
472 from the inquiry into the employment by P. C. W. A. of a particular man or payment of compensation by P. C. W. A. for certain specific work.

The question under consideration goes clearly into an inquiry as to what the salary is of a man employed by Mr. Olson in his traffic office, one part of which is the supervision and management of the P. C. W. A. consolidation and distribution of the shipments of the members of that Association.

Mr. AMES: Mr. Examiner, may I submit a statement? I have never participated in these arguments up to this time, but it seems to me if it were established beyond peradventure of a doubt that Mr. Olson's operation was a private operation, then I would agree that the Commission is without power to search his private records, but Mr. Gordon is asking the Commission to presuppose as a fact the very thing that is under investigation.

That has to do with the status phase of the argument. But there is another element under investigation, and that is whether this operation is being run for a profit, and I take it the Commission is not precluded from considering the person who makes the profit, whether he be a member or a manager.

So, I don't see how you can foreclose the Commission, if you please, from finding out what this man is doing, unless you let them find out what he is doing.

473 Exam. WAY: That was clearly my thought that there were two phases connected with this question, one the question of profit, and the other as to the control, and, as Mr. Ames has stated, the subject under investigation, of course, is whether or not they are operating as a forwarder or as an association.

Now, you have indicated, Mr. Gordon, that perhaps if we would proceed to some other phase of this matter, it might become more apparent, that if we would reserve this question to the last end of the hearing, that it would be more agreeable. Is that your—

Mr. GORDON: Yes, more agreeable, and more likely to result in a satisfactory solution. I mean satisfactory to all parties.

Exam. WAY: Is that agreeable to counsel that that question be temporarily deferred?

Mr. TAYLOR: Yes, I will be glad to.

Mr. AMES: How can you do it, because the Commissioner is the final person to determine the status?

Exam. WAY: That is true, but it may be that some of the matters that are now in doubt, as we go along may be somewhat cleared up.

Q. (By Mr. TAYLOR) Well, I assume, Mr. Matthews, on the same ground, you don't care to state the amount of rent which is being paid in the offices being maintained by Mr. Olson.

A. I think if anybody should tell you he should tell you. I just work for him. I don't pay the rent.

474 Q. Well, that is one element of the expense? Now, how many rooms are there in Mr. Olson's suite of offices?

A. We have seven.

Q. And what other tenants occupy ~~offices with~~ Mr. Olson?

A. None.

Q. No other tenants occupy any of those seven rooms?

A. No.

Q. No other traffic representatives?

A. No.

Q. All confined to the business of Mr. Olson, that is P. C. W. A. and other business which he maintains at that address?

A. Yes, sir.

Q. Business identified with traffic services generally, is that right?

A. Yes.

Q. How many carloads of freight did P. C. W. A. handle during the year 1943 from Chicago to the west coast, Mr. Matthews, if you know?

A. I don't have that record with me.

Q. Nor for 1944?

A. Not for any year.

Q. You assemble freight at the Transport Terminal Warehouse in Chicago?

A. Transport Terminal Company.

Q. And do you pay that terminal there for charges
475 which it advances on the way bills along with freight charges when the cars reach their destination on the west coast?

A. I don't quite understand that.

(The question was read.)

A. (Continued) The Transport Terminal Company does not advance charges on the way bills. You mean with the rail carrier?

Q. I will ask you what rail carrier serves the Transport Terminal Company at Chicago?

A. It is a joint service, the Alton and the B. & O.

Q. The P. C. W. A. has a contract agreement with the Transport Terminal Company, does it not?

A. Yes, sir.

Q. And that agreement calls for 12 cents per one hundred pounds to be paid by P. C. W. A. to the Terminals?

A. That is right for handling charges there.

Q. Are there any other charges by the Transport Terminal Company to P. C. W. A.?

A. None.

Q. If you know, what does the Transport Terminal Company pay the B. & O. and the C. & A. for loading the freight there at Chicago?

A. It is the tariff rate. Just from memory I would say it was around 4 cents, but I would have to look in the tariff notices exactly.

Exam. WAY: When you do look in the tariff, give
476 us the tariff reference.

Q. (By Mr. TAYLOR) Do you have a tariff here?

A. No, one in the office.

Q. Will you bring that tariff down with you in the morning?

A. Certainly.

Q. Do you know approximately the total business handled by P. C. W. A. during the year 1943, which was incidental to the automotive supply business?

A. No, I wouldn't.

Q. You have no idea approximately whether it would be a half or what other—

A. I would hesitate to guess.

Q. —nor for 1944?

A. It would be a matter of making an analysis from the records.

Q. Well, in a general way, isn't it so that P. C. W. A. handles its operations in a manner similar to that engaged in by freight forwarding companies?

A. Yes.

Q. Insofar as assembling freight is concerned to be transported and the distribution of the freight is concerned?

A. In like manner, yes.

Q. How many different brackets of freight does P. C. W. A. handle?

A. They handle freight in what the forwarder calls brackets 1, 2 and 3.

Q. And what are the rates of those brackets, and
477 what do they include, generally, that is, from Chicago to Los Angeles and other west coast points?

A. The first bracket, or what is now termed the present tariff, is rate basis No. 1 is on iron and steel articles, glassware and other commodities, not exactly similar, but taking the same carload rate of $1.10 per one hundred pounds.

The forwarder's rate from Chicago to Los Angeles or Pacific Coast terminal, is $2.12 per one hundred pounds.

The second bracket forwarder's rate from Chicago to Pacific Coast terminal is $2.39 per one hundred pounds.

Exam. Way: What is the carload rate?

The Witness: Carload rate on that is, I believe, runs from $1.11 to $1.34.

Mr. Ames: Have you said, Mr. Matthews, in a general way what type of commodities are there?

The Witness: Oh, in a general way, there are hundreds of them.

Mr. Ames: Could you generalize?

The Witness: Well, I was trying to think. Chemicals and drugs are in that.

Mr. Gordon: May I interrupt just a moment? You have a forwarders' tariff here?

The Witness: No.

Mr. GORDON: To which you could refer?

The WITNESS: No.

478 Mr. GORDON: There is some question as to whether you have got the figures mixed up.

The WITNESS: I have the figures wrong. I have a memorandum I gave Mr. Anderson several days ago. I will correct that. Bracket number 2 goes from carload rate $1.11 to $1.54 instead of $1.34 per one hundred pounds. That includes drugs, chemicals, candy, builders' hardware.

Mr. AMES: And $2.39 is still the forwarders' rate?

The WITNESS: Bracket 3, which is rate basis 3, goes from $1.55 to $1.82, forwarders' rate $2.70 from Chicago to Pacific coast terminal. And that includes automobile parts, machinery, and some articles of paper, and we had a variety of other kinds of freight.

Exam. WAY: Now, will you furnish me with the tariff reference on forwarders?

The WITNESS: We have six or seven tariffs applying from the east to the west coast.

Mr. GORDON: You want those later, Mr. Examiner?

Exam. WAY: I want them in this record.

Mr. GORDON: We will supply them.

Exam. WAY: I want the tariff that covers the charges that are shown on the freight bills that are introduced here.

Mr. GORDON: Will it be sufficient if we submit tariff charges from Chicago to Los Angeles as typical or representative?

Exam. WAY: Yes, on this territory.

479 Q. (By Mr. TAYLOR) Mr. Matthews, in order to obtain a little more detailed information with respect to your operations, generally, does the P. C. W. A. assemble less than carload freight into carload lots into Chicago, assume responsibility for transportation from point of origin to destination, pay all handling to destination charges, pay freight claims to the common carrier, which is one and two of the acts, and distribution of the carload shipments to the respective consignees at destination?

A. Yes, sir.

Mr. GORDON: Just a moment. I ask that the witness' answer be stricken out.

Exam. WAY: What is your objection?

Mr. GORDON: The objection, if the Examiner please, is that this is a compound question, all thrown into one. Some part of it at least calls for a legal conclusion, which this

witness is not qualified to answer, which this witness is not competent to answer.

Exam. WAY: Strike out the question.

Mr. TAYLOR: I can give it to him one at a time.

Exam. WAY: Let the witness tell you how the traffic is handled.

The WITNESS: I take it you want it from origin to destination, all the steps?

Exam. WAY: All the steps.

480 The WITNESS: May I have that large exhibit of 275 pages?

Mr. TAYLOR: Perhaps this would be a good time, Mr. Examiner, to get a specific car and start it out at Chicago and follow it all the way through.

Exam. WAY: This is rather a difficult method of trying to follow the record. We don't have copies of the exhibits or anything to follow.

Q. (By Mr. TAYLOR) Will you put it up there so the Examiner can see that exhibit?

The WITNESS: I will select as typical a carload forwarded from Chicago on August 17, 1944, consigned from the Association to the Associaffon at San Francisco and stopping in transit to partially unload at Los Angeles.

Mr. GORDON: And the documents to which you are referring are included in that exhibit, are they?

The WITNESS: Yes, I am referring to a railroad bill of lading.

Mr. TAYLOR: Just a minute. Have we in the record yet at this point the exhibit number?

Mr. GORDON: That is Exhibit 11.

Mr. AMES: Give us the car number on that one as typical.

The WITNESS: There are three car numbers, S. F. R. D. cars, 19156, 24807, 34630.

That was issued by the Transport Terminal Company acting as agents for the Pacific Coast Wholesalers' Association, and the original is signed by the rail car-

481 rier, who transported the car.

Exam. WAY: Baltimore and Ohio Railroad Company Bill of Lading?

The WITNESS: They used that form. That should be marked out. It was really Alton railroad. It was presented to the Alton to Kansas City and thence Santa Fe to destination.

Mr. AMES: You mean the printing at the top should be marked out where it shows B. & O.?

The WITNESS: Yes.

Exam. WAY: How would I know that on this bill of lading? We haven't any rubber stamps on here.

The WITNESS: That could be transcribed onto it.

Mr. AMES: Do you have the original bill of lading with you, Mr. Matthews?

The WITNESS: Yes, sir.

Mr. AMES: Does that indicate which railroad company executed it?

The WITNESS: Well, I see now. It is a joint stamps, Alton Railroad and Baltimore & Ohio Railroad. It is a joint terminal operation.

Exam. WAY: All right. As far as the bill of lading is concerned, the shipment moved Alton to Kansas City and Santa Fe beyond?

The WITNESS: Yes. It is logically shipped. The operation had really started out with the original point.

482 Exam. WAY: All right.

The WITNESS: Shipments are forwarded from origin points, but shippers routed via motor carriers, freight forwarders. Railroads.

Mr. AMES: Any one or all of them?

The WITNESS: Any one or all of them. They use all methods. And they are directed to Pacific Coast Wholesalers' Association at Chicago, and at that point the shipments are directed on the carriers freight bills, and in this exhibit is a photostatic copy of the Liberty Highway Company, freight bill 125629, dated Cleveland, Ohio, August 15, 1944, covering a shipment of 29 packages of automobile parts.

Exam. WAY: It is not necessary to read that. Who pays the charges?

The WITNESS: Shipment is delivered by the truck line to the terminal company, and they receipt for the merchandise and move it Pacific Coast Wholesalers' Association. They pay the truck line for their charges from point of origin to Chicago. They classify the freight and cause it to be loaded in the proper cars for forwarding by rail to west coast unloading stations.

Mr. AMES: Mr. Matthews, may I interrupt there?

The WITNESS: Yes, sir.

Mr. AMES: The bill of lading issued at Cleveland, as a typical point of origin, consigns the freight in the

483 first instance, to Chicago, care Transport Terminal Company?

The WITNESS: To Pacific Coast Wholesalers' Association, Chicago, in most instances, and then it shows in the body of the bill of lading the subconsignee and ultimate destination.

Mr. AMES: That was what I was going to ask you, in the body of the bill of lading it shows the ultimate consignee in that Pacific Coast destination.

The WITNESS: Yes.

Exam. WAY: Where does that show?

The WITNESS: We don't have those bills of lading. They are not sent to us by the shipper. Chicago, as I say, classifies the freight and causes it to be loaded in carloads, and causes it to be sent to the west coast by railroad to the unloading station. They prepare a manifest separately and list the individual shipments in the car, and they bear a symbol according to the destination or unloading station to which the car is being sent. C-L.A. stands for Chicago-Los Angeles. And C-P.O., it stands for Chicago-Portland. Those manifests are numbered in consecutive order and bear the date and the car numbers and the routing and also cover freight shipments from Chicago to Los Angeles, or to whatever the unloading station is.

Mr. AMES: These manifests are the large yellow sheets contained in Exhibit 11?

The WITNESS: Yes.

484 Mr. AMES: And they are prepared at Chicago by the—

The WITNESS: Transport Terminal Company.

Mr. AMES: By the Transport Terminal Company?

The WITNESS: Those are sent to us by air mail with all of the original documents that they received with the freight at Chicago.

Mr. AMES: What are the original documents that they received with the freight at Chicago?

The WITNESS: Truck line freight bills, forwarder freight bills and railroad freight bills.

Exam. WAY: How would you identify the freight bills on the manifest?

The WITNESS: Each individual freight bill has a folio number, which is the line number of the manifest, shipment number 1 or 2, shipment number 56.

Mr. AMES: You are using a sheaf of documents in your testimony in addition to Exhibit 11, another sheaf of documents which I assume are the original bills which you stated were sent to you by air mail along with the manifest?

The WITNESS: Yes.

Mr. AMES: And this sheaf of documents is the bunch of motor carrier bills or freight forwarder bills of lading or railroad bills of lading, as the case may be. Is that right?

The WITNESS: Yes, and this photostatic copy of the Liberty Highway Company freight bill is one of those, and it is typical.

485 At Los Angeles, after that is received by air mail, the rate clerk in Mr. Olson's office verifies the rates charged by the carriers into Chicago—verifies the correctness, and also verifies the correctness of the rate shown on here in red pencil—

Exam. WAY: Not "on here." On what?

The WITNESS: On inbound freight bill of the carriers.

Mr. AMES: The originals?

The WITNESS: The originals.

Exam. WAY: Will you take that freight bill before you, numbered 125629, and show it to me on the manifest?

The WITNESS: Yes, sir, that is folio 2. Shipment from Thompson Products Company to Lambert Company, Limited. All listed here, the firm, the packages, the rate, as shown on the photostatic copy of the freight bill.

Mr. AMES: Is Lambert Company a member of P. C. W. A.?

The WITNESS: They are.

Exam. WAY: The charges that were paid are advanced on the manifest?

The WITNESS: That is true, and when those are verified we send a Pacific Coast Wholesalers' Association check to Transport Terminal Company, reimbursing them for the amount they advanced for us, and also the Chicago handling charge of 12 cents.

486 Exam. WAY: Is that shown on these documents?

The WITNESS: That is not shown, no. After these charges are verified, then they go to the bill clerk, who prepares the Pacific Coast Wholesalers' Association freight bills, which bear the same references as the manifest, in this case C. L.A. 984, with a dash, indicating the folio number 1 to 56. Each one is an individual shipment.

Exam. WAY: Who is the freight clerk in your office?

The WITNESS: There is a bill clerk.

Exam. WAY: A bill clerk in the office of the Association?

The WITNESS: No, in Mr. Olson's office. And after they are billed and checked, the freight bills for all shipments for Los Angeles covered by this manifest are sent to the distribution, Pacific Transport Warehouse Company with

an invoice for the total amount they are to collect from our members, and after the delivery receipts, copies—a 9-part freight bill—

Exam. WAY: All right.

The WITNESS: If there are shipments to go beyond the distributor—we designate to the distributor how they are to be forwarded, and if they are to be prepaid we allow him the amount to prepay the shipment to destination. Here is one there (indicating).

Mr. AMES: You are pointing at this manifest, item number what?

487 The WITNESS: No. 16.

Mr. AMES: Mr. Matthews, do you have one of those 9-part freight bills?

The WITNESS: No, I don't have a blank here in the room.

Mr. AMES: That is the freight bill that you send down to the Pacific Transportation Warehouse?

The WITNESS: That is on what he makes a delivery and collects charges for the Association.

Exam. WAY: Does he include in the advances there anything for the Warehouses' Service in Chicago?

The WITNESS: No, the amount shown in the advances is the actual amounts paid to the carrier bringing the shipments into Chicago, and is a separate item on each manifest, showing Chicago handling and the amount—and those, of course, are included together, and we pay him the total amount.

Exam. WAY: That is to say, you take the total amount of the advances, and you add to that the amount of the handling charges?

The WITNESS: That is true.

Exam. WAY: And you pay to the carrier on a receipt?

The WITNESS: And then after the carload is delivered and then the rail carrier bills us for their charges, and this exhibit includes an original Santa Fe Railroad Company freight bill, H.4697, dated San Francisco, September 18, 1944, for the total weight of the car, 53,998 pounds,

488 and the carload rate, $1.78, total freight charges, $1,961.16, plus $6.93, stop charges at Los Angeles and transportation tax, $29.04, total $997.13.

(Discussion off the record.)

Exam. WAY: Now, give me a general statement of the method of assembling those charges, and what they consist of?

The WITNESS: After we issue our freight bills, we set up the revenue for each manifest, and then we have to de-

termine the actual cost of each shipment so that we can determine how much savings on each shipment is to be returned to the member. We have a ledger where we—incidentally, all of our accounting is done on the dates out of Chicago. Cars that move from Chicago in one month are here the same month record and not by the date of arrival—we have a ledger where we check the manifests in consecutive order, and show the date and show the weight, and we show the amount of revenue for the entire manifest, and then we have a column where we show the extension of that weight by the total of 13 cents, administration costs, 2¼ cents billing and air mail arrival notice cost, and insurance premium, 1-⅛ cents. That is all put in one column.

Then after checks are made to Chicago, to cover advance handling charges, and on the railroad covering freight charges covering Chicago to distribution point, covering delivery and unloading, and shows carrier carrying beyond unloading stations. Those are all posted under each manifest in the operation.

489 Mr. AMES: Each is posted in the column appropriately headed to designate its respective expenses?

The WITNESS: Yes, sir. That is, the total cost is determined by totaling the column and the difference between the total cost and the total revenue on that manifest is shown as the balance. After we pay all the charges on a particular manifest, it is then possible for us to start our cost accounting, and each shipment is charged to the operation, to the rail rate according to weight, and the actual advances, and the determined amount of overhead, which is loading and unloading, administration, insurance and billing, and also the delivery, is all the total sum. That is applied to the total shipment regardless of the nature of the shipment, whether iron bars or automobile lamps. That is done independently, and after arriving at the amount that is paid in and the cost of the shipment, that saving is put in another ledger under the man's name by manifest reference, and those totals for each manifest from those other ledgers are brought into this ledger as the savings computed for that manifest, and that must agree with the balance we have already arrived at within ten cents either way, which we allow for fractions. If the difference is over ten cents, they have to find what error has been made in calculating, or if we paid the railroad too much, or just where the trouble is, which we call balancing a manifest, balanced really to the cents—

490 that is, I should say, right to within ten cents.

Then, of course, we have our record of cases received, and checks issued, accounts payable, and those records are balanced with these records.

For example, all our checks issued must total the same as the total operation in here. Nothing is paid out except by check, and nothing received but checks, we handle no cash in the office whatsoever.

Q. (By Mr. AMES) Would you mind if I recapitulated that with you so we can have it in one place in the record?

A. Yes.

Q. Your gross intake or receipts of the consignee is the forwarder rate from origin to destination, or the rail l. c. l. rate, whichever is the lowest?

A. Whatever the forwarder names in his tariff.

Q. And to that you add a plusage of 3 percent which will later be explained?

A. Yes.

Q. And that is the gross intake from your consignee?

A. True.

Q. Let me go through the operation and see if I have it correct. You have first your inbound charge to Chicago, if the shipment originates back in Chicago?

A. Corect.

491 Q. Secondly, you have the assembly cost at Chicago?

A. We call it "Chicago handling." Yes, sir.

Q. Thirdly, you have the railroad carload rate from Chicago to Los Angeles, if that is the break bulk point?

A. Yes.

Q. Fourthly, you have the distribution cost at Los Angeles?

A. Yes, sir.

Q. Fifth, you have an item of 13 cents which, for convenient terminology, we will call Mr. Olson's commission?

Mr. GORDON: "Administration."

Q. (By Mr. AMES) Sixth, you have an item of a 2½ cents for air mail?

A. Air mail arrival notices.

Q. Then, seventh, you have an item of 1-⅛ cents for insurance coverage?

A. That is true.

Mr. GORDON: That is the actual insurance rate.

The WITNESS: Yes, that is what we pay the insurance company.

Q. (By Mr. AMES) And those I have read are the total expenses that you can apply against this gross receipt from your consignee, are they not?

A. Yes—oh, then, the one cent for legal expenses per 100 pounds.

Mr. AMES: Off the record.

(Discussion off the record.)

492 Q. (By Mr. AMES) Now, from the standpoint of transportation, whether it be by rail, truck, car forwarder, or truck at destination, billing and insurance, those usually are the only deductions you make from the receipts you get from your consignee? I am coming later to the legal and revolving fund. Now, all those latter three items clear through Mr. Olson's office, do they not, administration, billing and insurance? That is, they are all handled through his office?

A. All expense against freight is handled through his office. No difference whether the rail charges or any other charges.

Q. Now, I am going to the next step, which is the one cent deduction for legal expense, and that, I take it, is deducted from the savings that you remit to the shipper before you remit it.

A. Yes, it is part of the cost.

Q. The saving is figured on the gross receipts?

A. Yes.

Q. And from that gross saving you deduct one cent for legal expenses, and then five cents revolving fund?

A. Yes.

Q. Isn't that the whole story of what goes together as a rate saving?

A. Yes.

Exam. WAY: I think that is a very clear summary of it, and I think that it has been straight.

493 Mr. AMES: May I ask Mr. Matthews right at this point, too, some questions about this form of freight bill that he issues to his consignee?

Q. (By Mr. AMES) Mr. Matthews, this document I hand you is a typical specimen of your freight bills, is it not?

A. It is.

Q. Is that you describe as a fan-fold bill?

A. Yes, sir. It consists of nine separate pages in a fan-fold.

Q. And isn't it true that the typewritten information on all nine copies would be the same? That is, you make a carbon as you go down?

A. Yes, sir.

Q. And that form of bill might have different rubber stamp impressions, but the original typing goes through the copies of all of the nine sheets?

A. Yes.

Q. And isn't it also correct that this fan-fold freight bill will also disclose the origin point of the shipment, being St. Louis, Cincinnati, or Chicago?

A. Always.

Q. It will also disclose the identity of your member as a consignee?

A. Yes, sir.

Q. And his addresss?

A. Yes, sir.

494 Q. It will disclose the weight of your individual shipment, the rate, and the charge?

A. Yes, sir.

Q. And it will disclose the amount you collect from him plus this 3 percent.

A. Yes, sir.

Mr. AMES: Just wanted that in the record at that point.

Mr. GORDON: May I supplement the record? In giving your answers describing the way this accounting is handled, Mr. Matthews, you have referred to a large ledger, approximately 1½ feet long by 14 inches, have you not?

The WITNESS: Yes, sir.

Mr. GORDON: Now, in this you, I believe, described the cost accounting set up by manifests and applied it to the shipment as a whole, did you not, covered by each car?

The WITNESS: Yes, each manifest.

Mr. GORDON: Now, in addition to this ledger, you referred to another ledger in which you set up, I believe, the cost accounting of each member shipment, did you not?

The WITNESS: Well, that is the savings ledger, which is the same size as that (producing ledger).

Mr. GORDON: Now, on this savings ledger, Mr. Matthews, you show, do you not, the amount of savings on each individual shipment handled for each member?

The WITNESS: We show the savings for each mem-

495 ber on each manifest. That might have been more than one shipment, but we totaled it and put it in there.

Mr. GORDON: It is the result of this savings ledger that you said you had to bring into balance on the totals and further on the cost ledger that you described?

The WITNESS: Yes.

Mr. GORDON: Now, you have one of these ledgers of the size and thickness that I indicated for each year, do you?

The WITNESS: Yes, a complete record is kept each year of each manifest back to—

Mr. GORDON: For each station?

The WITNESS: Each station separately.

Mr. GORDON: And for each member?

The WITNESS: For each member, yes, sir.

Mr. GORDON: That is all I have.

Q. (By Mr. TAYLOR) Mr. Matthews, does the 2¼ cents for billing, plus the 13 cents for administration, represent the total amount to Mr. Olson for handling P. C. W. A. business in his office?

A. No, it doesn't.

Q. What percentage of the rate of 13 cents retained by Mr. Olson must be added to that 2¼ cents to meet the expenses of Mr. Olson's office? That is, with reference to P. C. W. A. business?

496 A. I would not know, Mr. Taylor.

Q. Going back to this Exhibit No. 11, the manifest exhibit,—

A. That is correct.

Q. —which I understand includes the representative shipments. What I want to bring out, and I don't believe it has been definite in connection with this discussion, does that exhibit include seven representative carload shipments, one to each major coast point destination served by P. C. W. A.

A. It does.

Q. What warehouse in San Francisco serves P. C. W. A.?

A. A. B. C. Transfer and Storage Company

Q. And what charges are collected by that warehouse for handling P. C. W. A. business?

A. They are paid 5 cents for unloading and 12 cents for delivering.

Mr. GORDON: May I interrupt? That is a payment that is comparable to the 18 cents per 100 pounds as described by Mr. Butler—

The WITNESS: Covers the same service rendered there, yes.

Q. (By Mr. TAYLOR) Will you give me the same information, please, in connection with other break bulk points or terminals served by P. C. W. A. at the destinations of your freight?

A. Portland is the same, 17 cents. Total for unloading and delivering.

497 Q. What warehouse is there?

A. Manning Transfer and Warehouse Company.

Q. And they handle the trucking?

A. They unload and deliver, yes, sir.

At Seattle, the unloading and delivery is handled by Eyres Transfer and Warehouse Company for 17 cents.

At Yakima, the unloading and delivery is handled by Redman-Fairchild Company, 17 cents.

At Spokane, the unloading and delivery is handled by Birdmoore Transfer ~~Com~~pany, 17 cents.

At Salt Lake City, the service is performed by Delivery Service Company, 16 cents.

Q. And those are all of the break bulk points served by P. C. W. A.?

A. There is Phoenix, Arizona. Our charges—the distributor there is Pacific Motor Truck Company.

Mr. GORDON: A subsidiary of the Southern Pacific.

The WITNESS: A subsidiary of the Southern Pacific. They have a tariff. Unloading and delivery and clerical work, and I don't have the exact figures with me. I will have to supply that.

Q. (By Mr. TAYLOR) Do you know whether the P. C. W. A. or Mr. Olson for P. C. W. A. has executed any contracts with any freight forwarding companies as defined

498 by part 4 of the Act, Freight Forwarding under permit?

A. Contract with them?

Q. Yes.

A. Not that I know of.

Q. You don't know whether any of these warehouses, any other forwarding institution, are freight forwarders?

A. I don't understand the question.

Q. Well, for instance, you joint load with the Los Angeles Machinery and Dealers Association, or—

A. (Interrupting) We don't joint load with anybody, but the Hardware Metal Carloading Association joint loads with us. They are allowed to put their freight in our car.

Q. And that is covered by written contract, is it not, or don't you know?

A. I don't know.

Q. Do you know whether that is a shipping association operating without a permit from the Commission, or is it a forwarder?

A. It is not a freight forwarder. I don't know.

Q. The answer is, to your knowledge, you don't know of

any contracts, any written contracts, between P. C. W. A. and any freight forwarding company?

A. No.

Mr. TAYLOR: Off the record.

(Discussion off the record.)

(Witness excused.)

499 Exam. WAY: We will recess at this time until 9:00 o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., February 5, 1945, the hearing in the above-entitled matter was adjourned until 9:00 o'clock a. m., Tuesday, February 6, 1945.)

500 Before the Interstate Commerce Commission

Ex Parte No. 160

In the Matter

of

PACIFIC COAST WHOLESALERS' ASSOCIATION.

Investigation of Status.

Room 229 Federal Building,
Los Angeles, California.
February 6, 1945. 9:00 A. M.

Met pursuant to adjournment.

Before: L. WAY, *Examiner*.

APPEARANCES:

As heretofore noted.

501 PROCEEDINGS

Exam. WAY: Let us proceed.

J. H. MATTHEWS, was recalled, and testified further as follows:

Exam. WAY: Have you finished with Mr. Matthews, Mr. Taylor?

Mr. TAYLOR: I have just two or three additional questions.

Direct Examination.

Q. (By Mr. TAYLOR) Does the Association handle all of the freight for the members that moves into Chicago to points on the west coast, do they handle all of the l. c. l. freight of the members?

A. I don't know just what you have in mind. We have some high bracket for Calship that we used Pacific Freight Association, a regular forwarder, as the underlying car-

rier. That is, we don't have an occasional all-commodity car for Calship.

Q. And I suppose there are also lesser portions of freight shipped by members from Chicago which won't mix under any circumstances, and that freight would have to be handled as contraband, so to speak, if it was handled at all?

A. Some shipments move through less than carload rate contraband.

Q. In other words, there is some freight of members which it would be unprofitable for the Association or for the members themselves to handle through the Association, and that type of freight, of course, is left to the for-

502 warders to handle? Is that correct?

A. Yes.

Exam. WAY: Is that handled through your Association?

The WITNESS: Mr. Examiner, first we give the member a list, showing him what is eligible for movement in our pool cars for savings, and another list showing what commodities on which there would be a loss if shipped in Association cars, and some members don't have absolute control of the arrangements and make errors, and we do show a loss, and the members are advised and watched about those shipments in that commodity.

Exam. WAY: But in your dealings with your members, you don't undertake to handle all of their traffic?

The WITNESS: No. It is impossible.

Mr. TAYLOR: That is all I have.

Cross Examination.

Q. (By Mr. AMES) Mr. Matthews, on that basis, if a receiver were in Los Angeles and had nothing in the fourth and fifth bracket freight, and never had any in the first three brackets, he wouldn't be eligible for membership?

A. He wouldn't want a membership.

Q. Now, if there was an occasional loss on traffic which gets into P. C. W. A. cars by mistake, or otherwise, who bears that loss.

A. The member.

Q. Yesterday you read a list of the break bulk

503 points numbering seven in all. Does that constitute the entire list of break bulk points?

A. Eight regular unloading stations.

Q. Oh, I haven't got Los Angeles here.

A. Well, that is a minor point.

Q. The reason I haven't got it here, I haven't got the charges here. You were citing various charges. Did you

determine over night what the terminal cost was at Phoenix, Arizona?

A. No, I didn't. Mr. Taylor said it wasn't necessary.

Mr. GORDON: When you say Los Angeles was a minor point, you were joking, weren't you?

The WITNESS: Yes, sir.

Q. (By Mr. AMES) Did you ever handle many prepaid shipments?

A. Yes sir

Q. How did you take care of the savings on those? Do you credit it to the member?

A. To the member who received the shipment, yes.

Q. Do you know whether he did, in turn, give it back to the shipper at the point of origin?

A. I don't know.

Q. But as far as you know the prepaid shipments are handled the same as P. C. W. A. handles other shipments?

A. Yes.

Q. Just what does Transport Terminal do at Chicago, if it doesn't have to load there into the car?

504 A. It receives it and receipts for it.

Q. Receives it and receipts for it, and I take it classifies it.

A. Classifies it.

Q. And what else?

A. They pay the inbound charges.

Q. Prepares the manifest?

A. Prepares the manifest.

Q. And what else?

A. They rate the shipments forwarder rate.

Q. That comes under classification, doesn't it?

A. No, classification into classified shipped cars it is to go into.

Q. And rate it by brackets?

A. And rate it by forwarder tariff, yes.

Q. Does that constitute about all the service?

A. They trace shipments.

Q. In response to the Commission's subpoena, have you introduced at this hearing records which would show the cost to the Transport Terminal of performing those services?

Mr. GORDON: What subpoena do you refer to here?

Mr. AMES: The subpoena of record here for general information.

Mr. GORDON: This witness wasn't subpoenaed, as

505 I understand it, to bring any records. Am I correct in that, Mr. Taylor?

Mr. TAYLOR: That is correct.

Mr. AMES: May I see the general subpoena?

Mr. GORDON: There are no general subpoenas.

Q. (By Mr. AMES) Mr. Matthews, do you pay Federal tax to Mr. Butler on the shipments handled by him?

A. We do.

Q. And you pay the Federal tax, I take it, on the inbound movement to Chicago?

A. Yes.

Q. And you pay the Federal tax on the railroad shipment?

A. Yes.

Q. What disposition do you make of this 3 percent that you add to the freight bill of your receiver, your consignee member?

A. That is part of the revenue.

Q. Part of the revenue?

A. That is correct, from the members.

Q. And that goes into the freight account allowance with the freight charges?

A. Right.

Mr. AMES: That is all I have, Mr. Examiner.

Exam. WAY: Any other questions?

Mr. GORDON: Yes, I have some questions.

Q. (By Mr. GORDON) Mr. Matthews, in response
506 to some questions by the Examiner you brought out of your records, the records of the P. C. W. A. that were in the court room, certain ledger books, and made some explanation of your methods of accounting. Had you completed that description of the entire operations conducted in the office of Mr. G. A. Olson with respect to the receipt and disposition of the P. C. W. A. freight?

A. No, I only covered the method of determining the cost and the savings to the members. There are other books of record.

Q. Will you state what other books, and if you have examples of them here to show the Examiner, will you produce them?

(The witness produces books and records.)

Q. Now, you have brought out these files that are here, what I would call office ledger records, and volumes of that type. Will you state what they are?

A. The first record—

Q. State what these books are, generally, describe them so the record will show what you are looking at.

A. This is a loose-leaf binder, about 12 x 18 and ½ inch thick.

Q. We don't care about that. What is it generally?

A. This book contains the record of checks issued, which is cash disbursed, and a record of checks received.

Q. By P. C. W. A.?

A. By P. C. W. A.

Q. Will you describe how the entries are made in there and for what purpose?

507 Each check is listed in numerical order and the items of expenditures are spread across the ledger page under the unloading station symbols.

Q. Parenthetically, Mr. Matthews, is this a record of the receipts and disbursements from the freight account?

A. Entirely the freight account.

Q. Proceed.

A. And the record of checks issued at the end of the month, when there is a totaling, which is balanced with the cost record, which I explained yesterday.

There are some checks that are not expense. That is the expense against shipment. We receive a check from a railroad in payment of a claim for a member. We deposit that and put it in the exchange account, and issue a check of like amount to the member, a P. C. W. A. check. Also the record of cash received.

We make vouchers for all checks deposited, and the vouchers contain the details of what the check covers. Those are written up in numerical order and spread across the ledger page under the unloading station symbols in the same manner the checks here (indicating), but, of course, these are accounts receivable checks. That also at the end of the month, those totals must balance with the cost record, which I explained yesterday.

Q. The revenue column?

A. Yes, sir.

508 Likewise, there are some exchange items shown there opposite of checks drawn for cash receipts. These, particularly, drawn on the Hardware Metal Carloading Association, because P. C. W. A. pays all freight on all cars and bills Hardware Metal Carloading Association for their proportion at the carload rate, plus tax, and those checks are received from them to reimburse P. C. W. A. for what they have expended for their account.

Q. I think you stated yesterday that this other Association— what is the Association?

A. Hardware Metal Carloading Association.

Q. Hardware Metal Carloading Association is permitted to co-load in the P. C. W. A. cars?

A. Yes.

Q. Proceed.

A. Then we have another, I call it the general ledger, of the same size as the one just mentioned, where we bring all the figures together on what we term a balance sheet, which indicates the account with the bank, the accounts receivable, the suspense account, the exchange account and the amounts due members. There are other pages in this ledger that show the monthly details of the items I just mentioned.

Q. This ledger, I take it, also relates entirely to the freight account.

A. Relates entirely to the freight account of P. C. W. A., yes, sir.

Mr. AMES: May I ask a question to clarify the record?

509 Mr. GORDON: Certainly.

Mr. AMES: That account, I take it, doesn't include here the so-called legal fund or revolving fund?

The WITNESS: The revolving fund, yes, is in the account. It is retained by the freight account for operating purposes. The legal assessment is run through the books the same as any other expense, carload rate or drayage or any other expense, and a check is drawn at the end of the month to the general fund and mailed to Mr. Sol Smith's office.

Mr. AMES: With those ledgers you have before you, would they also reflect the membership dues?

The WITNESS: No, nothing but expense to shippers and receipts.

Exam. WAY: Are all the accounts which pertain to the membership dues kept by Sol Smith?

The WITNESS: Yes, they are not kept in our office.

Exam. WAY: You have nothing to do with them except the actual freight accounts?

(No response.)

Q. (By Mr. GORDON) Have you concluded this explanation of this ledger?

A. I can't think of any more to say about it. It probably is.

Q. I am not sure whether yesterday you explained the savings register? Did you complete your explanation of that register yesterday?

510 A. Well, perhaps I was not really definite. I got to going a little bit fast.

Q. That was one of the two ledgers or registers that you described to the Examiner yesterday while you were on the stand?

A. Briefly, we do our cost accounting on the manifest and determine the savings on all shipments for the members on that manifest, and that record is carried over into a ledger sheet and spread between stations under the membership heading, so that at the end of the month you can see what one particular member received at that station, and those figures are transferred by manifest number over into the cost record, and they must agree.

Q. In other words, the savings register and the cost accounting, shown therein, based initially on the data contained in the manifest?

A. That is correct.

Q. And are related to that by number, so you can check back and see to what freight it refers?

A. That is correct.

Mr. TAYLOR: Mr. Matthews, will you please furnish for the record a copy of the balance sheet for the freight account covering the year ended December 31, 1944?

The WITNESS: It is not ready yet, Mr. Taylor. We were just able to start. You see, our accounts close a month after the dates on the manifest from Chicago. That was January 31.

511 Exam. WAY: The last day you have completed there.

The WITNESS: I have one year, December 30, 1944, which would be the same manner and all except the figures would be different.

Mr. TAYLOR: Well, do you have an extra copy of that which could be introduced as evidence?

The WITNESS: Yes, there is an extra copy.

Mr. GORDON: I am coming to that in a few minutes. I have just suggested to counsel that I plan to bring this all into evidence, if he will permit me to go ahead here.

Mr. TAYLOR: That is agreeable, Mr. Gordon.

Mr. GORDON: Thank you.

Q. (By Mr. GORDON) Going back to the matter of the accounting for the savings, am I correct in my understanding that there is attached to Exhibit 11 copies of typical manifests?

A. There is.

Q. And is there also attached to the exhibit any smaller sheets showing your basis of accounting used in connection with those manifests?

A. Yes, what we call the savings work sheet.

Q. The savings work sheet?

A. Yes.

Exam. WAY: Is that the large exhibit?

Mr. GORDON: Yes.

The WITNESS: Exhibit No. 11.

512 Mr. GORDON: Would the Examiner like to have his attention directed to that particular savings work sheet?

Exam. WAY: Yes, I would.

(Document presented to the Examiner.)

Q. (By Mr. GORDON) Now, looking at this Exhibit 11, which is on the bench there before the Examiner, will you indicate which of the documents included in that exhibit is the work sheet showing basis of savings?

A. I would like to refer to this same manifest that we referred to yesterday.

Exam. WAY: Is there any particular significance in referring to that manifest, as I notice that is a shipment in transit, is it not?

The WITNESS: Most of them are.

Q. (By Mr. GORDON) Answer the Examiner's question: Does that one have any particular significance, or is it typical and representative of all of them?

A. Yes, it is typical and representative. I can choose any one.

Q. Take that one, as long as you have directed attention to that, if you can.

A. That is a copy of the sheet we mentioned (indicating). Here is the original attached to the original manifest (indicating).

Exam. WAY: All right. We will use this one. Do you want to explain it?

(Discussion off the record.)

513 Q. (By Mr. GORDON) Now, the sheet you are referring to is a sheet with ruled lines and columns on which there are pencilled figures.

Exam. WAY: What is shown in the first column?

The WITNESS: That is the name of the member.

Exam. WAY: Second column?

The WITNESS: Destination of shipment.

Exam. WAY: Third column?

The WITNESS: Weight on shipment.

Exam. WAY: And the freight?

The WITNESS: The freight advanced for the member.

Exam. WAY: How is that derived?

The WITNESS: The forwarders' rate.

Exam. WAY: When is the membership advanced, do you know?

The WITNESS: That is actual charges paid in Chicago for each member that has shipments of this particular manifest.

Exam. WAY: That is freight charges?

The WITNESS: Yes.

Exam. WAY: Paid into the consolidation point?

The WITNESS: That is correct.

Exam. WAY: Now, what is the cost?

The WITNESS: The cost is all the other items at cost except the freight charges from point of origin to Chicago. That consists of the carload rail rate, the handling charge at Chicago, the unloading and delivering charge at des-
514 tination, insurance billing expense, and administration expense.

Now, this column (indicating) shows cost. The manifest, itself, shows the factors used in determining the amounts in that column. There is the carload rate of $1.133, which is $1.10, carload rate, plus 3 cents, the transportation tax.

The next factor is $.02702, which is the prorate on a stop-in-transit charge of $6.93, plus transportation tax.

The next factor is $.47035, which are all the other items I have enumerated, added together, including the Chicago handling charge, the unloading and delivery plus tax, insurance, also the one cent legal reserve, legal assessment, the billing expense and the administration.

Exam. WAY: Now, the column entitled "Cost" has no relation to the columns "Freight" and "Advance"?

The WITNESS: No.

Exam. WAY: And the savings is what?

The WITNESS: The savings is the difference between the advance and the cost added together, the total deducted from the amount advanced by the member.

Q. (By Mr. GORDON) Take the figures there on that first line.

A. In the first line the member had shipments aggregating 244 pounds, on which the freight bills were rendered for $9.64.

Q. That is the advance by the member?

A. Correct.

515 And then the figure $2.78, which represents the tariff freight charges from origin points to Chicago.

Exam. WAY: You add those two together, and that is $12.42?

Mr. GORDON: No. Let me interrupt just a moment.

Q. (By Mr. GORDON) You took the $9.64, representing the amount advanced by the member, did you not?

A. Yes.

Q. And from that you deducted the sum of $2.78 and the sum of $3.98?

A. That is right.

Q. Is that correct, as shown on this first line?

A. That is correct.

Q. And you got a resultant figure of what?

A. Savings, which is a net of $2.88.

Q. Now, if I understand yor correctly, there are sets of figures attached to each manifest setting forth similar figures and for the same purposes that you have just explained?

A. Correct.

Q. Has that practice been observed continually through 1942, 1943 and 1944?

A. It has. It is being observed now.

Q. Is there any other explanation that occurs to you that you would like to make in connection with this savings record?

A. I would like to make it clear that the amount of what we call "overhead", which is all items other than

516 transportation, that is, rail or transportation into Chicago, are added together and that factor is continually used—or, constantly used on all shipments regardless of the carload rate or the rate into Chicago, or the class of merchandise. I believe I mentioned yesterday it applies to steel bolts or automobile lamps, or whatever the shipment consists of.

Q. In addition to the savings register, what was the other book of records that you explained yesterday, the general register—how did you describe that?

A. That is the cost register.

Q. That is the cost register?

A. Yes, sir.

Q. And had you completed your explanation of the cost register?

A. I believe I did.

Q. And is the cost register that you described yesterday a type of accounting that you carried on all through 1942, 1943 and 1944?

A. Yes.

517 Exam. WAY: That relates only to the freight account?

The WITNESS: Yes, sir.

Q. (By Mr. GORDON) And that was carried on through those years and is still being carried on?

A. Yes.

Exam. WAY: While it might be slightly repetitious, I wish you would give me a general description of that register again.

Q. (By Mr. GORDON) Will you do that, Mr. Matthews? Perhaps you better bring the books here (indicating) and be able to answer any questions about it.

(The witness produces the register.)

A. This cost ledger or register has a section for each unloading station, and separate sheets for each month, and the manifests are entered under the proper month and station in numerical order and showing the manifest number, car numbers, weight, total amount of the freight bills issued against the particular manifest, and then the cost items are under different headings.

The first heading in the book covers administration, billing and insurance.

Q. And that is all headed ADM, an abbreviation for "administration"?

A. That is right.

The next heading is "Chicago handling and advances."

Q. And that includes what?

518 A. That includes the transportation charges from origin points to Chicago, and the Chicago handling charge of 12 cents.

Q. That is the charge made by the Transport Terminal, Incorporated, and paid to them for that purpose?

A. Against the Association and paid to them for their work.

The next column is headed "Rail," and that, of course, covers the rail charges paid on that particular manifest.

Q. From Chicago to destination?

A. From Chicago to destination.

The next column is headed "Distributor" and in that column are entered the amounts paid to distributors for unloading and delivering shipments to members.

Q. That is the type of charge that is paid to Pacific Warehouse & Transfer Company, represented by Mr. Butler, a witness?

A. Correct.

Q. For which he receives 18 cents at the present time?

A. That is correct. The next column is headed "Beyonds." In that column is posted any payments made for transportation beyond the unloading station.

The next column is headed "Miscellaneous," and there are only a few items entered in that column.

Q. What would that include, Mr. Matthews?

A. I was just trying to think. They are mostly adjustment items.

519 Exam. WAY: That is sufficient.

The WITNESS: The next column is headed "Total" and in that column is the total expense on the manifest, which consists of the various columns that I have named, other than the revenue or invoice column.

The next column is headed "Savings"—

Q. (By Mr. GORDON) Balance?

A. Oh, yes, balance. Column headed "Balance," and the amount in that column is the difference between the total freight bills issued on a manifest and the total expense on that particular manifest.

The next column is headed "Savings," and in that column are posted the amounts determined as savings from the work sheet, which is attached to the manifest, and which was read into the record from the savings ledger, and it must, as I explained yesterday, it must be of the same amount as the balance, with the variation of 10 cents allowed for disposition of fractions.

The next column is headed "U/C," which we call "Undercharge reserve," which is in reality a suspense account.

In that suspense account would be posted such items as correction on inbound freight bill. We knew that we would get a balance due freight bill from that carrier, so we set the amount up in suspense, charged the cost to the member, and then when we get the balance due freight bill

520 the suspense account is debited and clears the item.

It would also be true of overcharges on inbound shipments.

Exam. WAY: I don't think you need to explain that.

Q. (By Mr. GORDON) Now, Mr. Matthews, is there a blank page, or would that be of any assistance to the Examiner; to have a typical page?

A. Yes, we can remove one.

Exam. WAY: I don't think it is necessary.

Q. (By Mr. GORDON) Well, never mind. I don't know whether that would be of any assistance in following the method of accounting. Never mind, Mr. Matthews.

Mr. GORDON: Has that sufficiently been cleared?

Exam. WAY: I think so.

Q. (By Mr. GORDON) Mr. Matthews, in addition to these ledgers, these four ledgers that you have produced and explained here, you have four large transfer cases in which you have numerous documents. What do they contain? These were brought here, as I understand, in response to the subpoena, and in accordance with the request made by Mr. Anderson, indicating the particular documents that he desired to have available here at the commencement of the hearing.

A. That is true.

Q. And what are they? What do they contain?

A. They contain similar records that were charges explained back in 1938. They contain check stubs for
521 1942, 1943 and 1944. They contain canceled checks for the same years. They contain all of the cash receipted vouchers for the year 1944, and the cash receipted vouchers for the month of December, 1943, and December, 1942, and car files for cars that are covered by Exhibit 11.

Q. In other words, they pertain entirely to the freight account?

A. Entirely to the freight account.

Q. Now, this car file which you have just shown me appears to be in a manila folder of approximately a foot by 10 inches in dimensions, containing shipping documents, and does that bear a reference number?

A. We have one for each manifest, and this one bears reference of C-LA 946.

Q. That contains reference to the manifest contained in Exhibit 11 which you described?

A. Correct.

Q. And does each car file contain a complete file of shipping documents in connection with that car issued in handling?

A. It does.

Q. Together with the original cost memorandum sheet and a copy of which is attached to Exhibit 11?

A. That is right.

Q. Does it contain a copy of the manifest, the original manifest?

522 A. The original manifest? Yes.

Mr. TAYLOR: Pardon me. At this point there seems to be some misunderstanding with respect to Mr. Matthews' response to your question there regarding an agreement by Mr. Matthews and Mr. Anderson as to the contents of that file. Do you wish to make a statement, Mr. Anderson, just to keep the record clear?

Mr. ANDERSON: The agreement referred to was the agreement to produce here at this hearing in response to the subpoena the records enumerated with respect to these but there was no agreement with respect to not furnishing all of the other records, and to date, as far as I know or have seen, the general correspondence files, and the contract files have not been presented.

Mr. GORDON: I would like to call the attention of the Examiner to the fact that with the exception of Mr. Olson's private office files, about which we are not in agreement, everything that has been asked for on direct examination has been produced. If the correspondence files have not been produced, it was because they weren't asked for by the attorney for the Commission on direct examination.

Q. (By Mr. GORDON) Going back to these car files, may I correct our understanding that the office has car files for all cars handled in 1942 and 1943 and 1944?

A. Yes.

523 Q. And also 1945?

A. Yes.

Q. That is a regular record permanently, or, at least, kept regularly by the office?

A. That is correct.

Q. And for how long do you keep those records?

A. Why, I would say four years, three and a half or four years, according to our storage capacity.

Q. As a matter of fact, you have them for years extending back beyond 1942?

A. No, we do not.

Q. What other records, if you haven't furnished, are contained in these transfer files that you have produced in court?

A. I think I named all of them.

Q. Yes. Well, did you describe these large ledger sheets, box of papers that you have here?

A. I described them by saying they were similar to these books for previous years.

Q. Similar to the book register that you have produced and referred to in your testimony?

A. Yes. One thing I did overlook that I was requested to bring, and I did, is the report for the months 1944 as to the number of shipments, their weight, and their savings.

Q. Is that available in the office?

A. It is here in the records. I added that to the

524 records I have brought.

Exam. WAY: Has that been summarized in any way? Can you give us the gross figure?

The WITNESS: I have the gross figure in the books.

Mr. ANDERSON: That is in the record.

Exam. WAY: All right.

Q. (By Mr. GORDON) Do you have also anything in the form of copies of financial statements made by Mr. Olson to the directors of P. C. W. A. regarding the freight account?

A. I do have, yes.

Q. How frequently are such statements prepared and made?

A. They are always made June 30, and at the closing day of the year, December 31, and quite often quarterly, in April and September.

Q. And did you have anything to do with the assistance and preparation of such reports?

A. Yes.

Q. Do you have available here in the court room copies of such reports?

A. I have our office copies, except that I do have two copies on the September 30, 1944, statement.

Q. Will you produce the other copies that you have available?

A. (No response.)

Q. You have a bunch of them here?

A. Yes, sir.

525 Q. Directing your attention to this copy of a statement, September 30, 1944, is this the document to which you refer?

A. It is.

Q. As a matter of fact, were you present at the board of directors' meeting when this was presented?

A. Yes, I was.

Mr. GORDON: I offer the documents just produced by the witness as the next exhibit in order.

Exam. WAY: It will be marked Exhibit No. 20 for identification.

(Exhibit No. 20, witness Matthews, marked for identification.)

Q. (By Mr. GORDON) That document is headed "P. C. W. A. Freight Account," dated September 30, 1944. Is that correct?

A. That is.

Q. Consisting of two sheets?

A. Two pages, yes.

Q. One showing assets and the other liabilities?

A. Yes.

Q. Now, Mr. Matthews, will you refer to your copy and let the Examiner refer to the original of that document, and make such explanation as may be necessary for an understanding of the items contained therein? The first item is cash in bank item, $12,552.49. As of what date was that?

A. As of September 30, 1944.

526 Q. That was the bank balance in the freight account on that day?

A. That is correct, freight account.

Q. And then you show "Station Accounts Receivable." Will you describe briefly—

Exam. WAY: It is not necessary to read the figures, or what they are, but just state it generally.

The WITNESS: These are accounts receivable as of September 30, 1944, shown by unloading stations.

Exam. WAY: These are the amounts which are due from the members?

The WITNESS: From the members.

Q. (By Mr. GORDON) From the members at each station? Is that correct?

A. Yes.

Q. All right. Then you show the next item U. S. Maritime Commission claims? Is that right?

A. Yes, sir.

Q. Describe what that is.

A. The government when paying freight charges deduct the amount of any claim that they have for loss or damage.

Q. The U. S. Maritime Commission, I believe, has shipments handled through Calship, which is a member? Is that correct?

A. Yes, that is correct.

Exam. WAY: I don't think you need to prove each
527 one of these accounts.

The WITNESS: They are small items, mostly.

Mr. GORDON: Well, if there is any question later—

Exam. WAY: Now, turn over to "Liabilities."

The WITNESS: The second page is liabilities of P. C. W. A. freight account as of September 30, 1944.

Q. (By Mr. GORDON) Very well. The first item there, I assume, is legal expense, August and September, payable to the general fund, $792.45. That, I believe, is self-explanatory. You have already testified that you collected 1 cent for legal expenses from the members, and that represents the amount for that period of time?

A. We hadn't drawn a check at the end of September.

Q. Then the revolving fund. What does that represent?

A. That represents 5 cents per 100 pounds deducted from savings from all the members from January, 1944, through September 30, 1944.

Q. Mr. Matthews, that reflects, does it not, the continuous accounting for these months through the year 1944, in that particular item without reference to when the Association handled it or when the corporation took it over?

A. That is correct.

Q. You didn't make any split between the accounting at that time?

A. We did not.

528 Exam. WAY: I think the exhibit itself is explanatory. If you have any further explanations—

Mr. GORDON: I think there are some explanations to be made there, if the Examiner will bear with me just a minute.

Q. (By Mr. GORDON) Coming down to this bracket of items, "Loans payable to members," 1937, 1938, 1941, 1942, $10,443.44. Will you explain what those items represent?

A. These represent the amounts advanced by the members in the years stated for working capital or revolving fund.

Q. And it is such advances that will eventually be paid off out of the money accumulated in the revolving fund?

A. The revolving fund will pay off the old loans.

Q. So when it was stated, I believe, by Mr. Jensen, that money had to be advanced for working capital, does it refer to these advances that are shown here on the record?

A. It does—or—

Q. His reference was to such advances?

A. That is correct.

Q. Now, Mr. Anderson has directed my attention to the third item on the liabilities, "Accrued Savings due U. S. Maritime Commission," March through September, 1944, in the sum of $37,586.68.

Will you explain that item?

A. That item represents the monthly savings for U. S. Maritime Commission from March through Septem-
529 ber, 1944, which was held because of the slow payment of advances by the Maritime Commission into the P. C. W. A. freight account. They didn't give us the money, and, of course, we couldn't send them money we didn't have. In the months of October and November a lot of this was sent to them because our condition improved.

Q. Does this bracket of items "Undercharge Reserve," from 1937 down to 1944, total $8,082.65, require further explanation for understanding of it?

A. That is the suspense account I explained, and there are items being debited and credited to it particularly for the last three years, 1942, 1943, and 1944. It doesn't remain fixed. And it more or less represents a working fund, because it is cash on hand or in the bank.

Q. And I take it this bracket of items carried under "Station Accounts Payable" represents the amounts that will be payable to the members at the various stations as their savings, is that right?

A. No.

Q. What does that represent?

A. That is the transportation and other charges that were unsettled as of September 30. I might explain that. We do our accounting on the dates the car leaves Chicago, and if the car leaves Chicago on January 31, of course, it is in transit at the end of the month, and doesn't arrive for eight or nine days, and the railroad takes a week
530 or more to present a freight bill, and it is well on in February before you account for that January 31 car, and that is what these items represent.

The savings that were due the members for the month of September is listed as September liabilities, and was paid at the end of October.

Q. Mr. Matthews, were reports in similar form prepared and submitted to the board of directors at perhaps quarterly and semi-annual intervals?

A. They were.

Q. In the earlier years they were not in such detail as this one for September, 1944, were they?

A. No.

Q. You began setting up the more detailed report in 1944?

A. That is correct.

Q. And in 1943 you got all this report on one pa ? Is that right?

A. That is the way the report was prepared. However, we had the similar data in the office for the breakdown of all the items.

Q. You had all the details in the office?

A. Correct.

Q. But in the main your report which was submitted to the directors was abbreviated so that the one for December 31, 1943, just shows two items under "Assets,"
531 namely bank balance and accounts receivable, does it not?

A. That is correct.

Q. And under liabilities you show the accounts payable, general, is one item, and then you set up in a similar manner accounts payable to members for the back years, 1932 to 1943, do you not?

A. Yes.

Q. And then you set up the undercharge reserve for the years 1937 to 1943 in the same manner as the one shown for September, 1944?

A. Yes.

Q. And that is all?

A. Yes.

Q. Showing a balance?

A. Yes.

Q. Now, Mr. Matthews, when the reports were prepared, do you know whether or not copies were made up in sufficient number to give one to each director?

A. There were sufficient copies made.

Q. And you attended some of the meetings of the board of directors, did you not?

A. I did.

Q. And do you know whether or not copies were handed to each director present at the meeting?

A. They were.

532 Q. And a copy was presented to Mr. Sol Smith, the executive secretary?

A. Yes.

Q. And at the time you attended these meetings was any explanation made of this report by anyone?

A. There was.

Q. By whom?

A. Mr. Olson.

Q. And were questions asked concerning it by the directors?

A. There were.

Q. And answers given by Mr. Olson?

A. Yes.

Q. And a general discussion among the directors about it?

A. Yes. I know of discussions.

Q. Now Mr. Matthews, going back to the question of these records, when the subpoena was served upon Mr. Olson to produce certain records at this hearing, did you do anything toward determining what the subpoena called for and whether it was feasible or practicable to bring the documents referred to to the court?

A. Yes.

Q. And what did you ascertain to be the volume of the records called for, exclusive of any accounting records, of Mr. Olson's office, which we have contended are his private records? Exclusive of those, how much volume was
533 comprised by all the documents mentioned or referred to in the subpoena?

A. I looked over the records and counted the number of file cabinets and drawers and transfer cases, and there were 96, at least, of the same type that are here in the room, the size of a file drawer in the ordinary filing cabinet.

Exam. WAY: What did they contain, all freight records?

The WITNESS: All records and correspondence pertaining to P. C. W. A.

Exam. WAY: How many files containing correspondence?

The WITNESS: I think there were possibly 12 files.

Exam. WAY: Now, as to the freight accounts, all the remainder of them were applied to the freight accounts?

The WITNESS: Well, I would say that all pertained to the freight accounts.

Exam. WAY: And the records that are here are typical of the ones that are in the office?

The WITNESS: They are representative, yes, sir.

Exam. WAY: Did you do anything toward looking toward being relieved of the duty imposed on you by the subpoena of bringing those cases into court?

The WITNESS: I was told that Mr. Anderson would be in to confer with us as to what he would want us to bring.

Mr. GORDON: May I respond to that question, please, your Honor?

Exam. WAY: All right.

534 Mr. GORDON: Mr. Matthews was not served with a subpoena *duces tecum*. He was only served with an ordinary subpoena.

Exam. WAY: I know.

Mr. GORDON: However, when the subpoena was received Mr. Matthews did a good deal of the detailed work as to trying to ascertain how compliance could be had, and when it was found out that the volume of records was so large that it would be wholly impracticable to cart it up here, I then got in touch with Mr. Taylor and suggested to him that we arrange to bring such portions on the first day as were required and thereafter bring such other portions as the Commission or parties might call for.

In response to that Mr. Anderson came,—went to the offices of the P. C. W. A. and checked over with Mr. Matthews the particular records that were brought here the first day.

And your Honor will recall in the opening of this hearing I made substantially that statement and explained the willingness on behalf of the respondents to bring such other documents concerning which there was no dispute as to their admissibility up here whenever they were wanted.

Exam. WAY: That is your contention, that Mr. Olson is engaged in a private business which is wholly apart from the P. C. W. A.?

Mr. GORDON: Yes, he is, your Honor, and in my judgment he is engaged in a private business of running
535 a general traffic consultant and traffic office and traffic managerial office.

Exam. WAY: You admit that he is also engaged in the operation of the operating company, in other words, the forwarding part of this Association wholly and separately from the Pacific Coast Wholesalers' Association?

Mr. GORDON: No, your Honor. I think that involves a legal conclusion. I see very clearly, I think, what, perhaps, you have in mind, and I think that the separability of Mr. Olson's participation in the work of the P. C. W. A. and the work that he does on behalf of the P. C. W. A. is more comparable to the work that the distributing drayman does than anything else I can imagine. While it is his private

business to administer and manage and supervise this job for P. C. W. A., he is doing it for them and not for himself. You might consider him an independent contractor, an independent contractor to the extent that he has by agreement undertaken to do a certain phase and portion of their work for them at an agreed compensation payable in cents per 100 pounds.

Now, Mr. Olson, by doing that, in my judgment, has never undertaken to run a consolidating and forwarding business for himself.

Exam. WAY: Well, does he do anything any different than any forwarding company would do?

Mr. GORDON: Yes, he does, very substantially different. In this way: Now, the physical handling of this freight, if the Examiner please, by the P. C. W. A. or by Mr. Olson on behalf of the P. C. W. A. is exactly the same as the physical handling and the consolidation of the shipments and the forwarding of the shipments by a freight forwarder, but neither the P. C. W. A. nor Mr. Olson on behalf of the P. C. W. A. or on behalf of himself does that for hire to the general public. He doesn't hold himself out to accept shipments from anybody and everybody, and a freight forwarder does. So there is the essential and basis distinction between what they do and what they undertake to do.

536

Exam. WAY: Well, of course, Mr. Gordon, that is what we are stressing, is purely the real nature of the argument, and the things that should be put into this record are the basic facts upon which the Commission may determine that particular thing.

In other words, to determine status of the Pacific Coast Wholesalers' Association.

Mr. GORDON: Well, I think we have diverged a little bit from the subject I wished to bring out.

Exam. WAY: The facts you are bringing out here now as to these freight accounts, I won't say that they are immaterial to this case or irrelevant, but I think it will be admitted by all parties Mr. Olson's concern is handling the traffic and is accounting for it. The subject goes considerably deeper than that particular phase, and the mere fact that you have all these records as to the handling of the freight, that by no means covers all of the underlying data necessary to determine whether or not Mr. Olson is operating as a forwarder, separate and apart from his connection with the Pacific Coast Wholesalers' Association.

537

Mr. GORDON: I recognize that that is a subject about which we have got to—

Exam. WAY: Well, I don't think it is necessary to spend too much time in going into these freight records.

Mr. GORDON: All right.

Q. (By Mr. GORDON) Mr. Matthews, you spoke in response to a question by the Examiner of the correspondence being contained in 12 of these filing drawers. Now, is the correspondence always accumulated in one place, or is it scattered through a large number of filing cabinets?

A. It is in several places throughout the office.

Q. In other words, in order to produce all the correspondence you would have to extract it from a good many filing boxes?

A. Filing cabinets, yes.

Q. Now, were you present when Mr. Anderson called at the office of Pacific Coast Wholesalers' Association as Mr. Olson's office at 108 West Sixth Street, Los Angeles, in December, 1943, for the purpose of making an examination of those files and records?

538 A. I was.

Q. And were you there on more than one day when he called?

A. Several days.

Q. And you heard him testify the other day about the time when he first came to the office for that purpose?

A. Yes.

Q. You were present, were you not, when he talked to you and Mr. Olson about his mission?

A. Yes.

Q. Do you recall how many days it was thereafter that he made his last visit to the office?

A. Well, he was in several days, as I recall, in succession. I would say four days in succession, and then he left and he returned later—either on one or two occasions—not all day—just—

Exam. WAY: Now, Mr. Gordon, if you are trying to bring out with that testimony as to what Mr. Taylor did or Mr. Anderson did or what anybody else did, the subpoena was issued, and it was served, and that is the only thing that we have to consider, whether or not the order of the subpoena was carried out. There is nothing that would vary that.

Mr. GORDON: With all respect to your Honor, I must disagree, but there are other things that will vary that and will govern whether or not either your Honor or the Court

reviewing your Honor's decision would conclude that
539 this subpoena was broad enough to comprehend the documents that were demanded, and, secondarily, whether the jurisdiction of the Commission is broad enough to warrant the issuance of such a subpoena, if the subpoena did cover it.

I do wish to put in the record sufficient testimony to rebut the statements made by Mr. Anderson on this stand, which clearly implied a wilful withholding and refusal of certain information, and I do wish to put in all the information that we have in this case, for I apprehend that that record alone, without other evidence in this case, will be properly viewed by your Honor or anyone else that considers the question whether or not a subpoena was properly issued to require Mr. Olson's office records, and whether or not the subpoena did in fact require them.

Exam. WAY: All right. Go ahead.

Q. (By Mr. GORDON) Did you hear Mr. Anderson testify on the stand during this hearing to the effect that he demanded all of Mr. Olson's records pertaining to his office costs and such records were not furnished?

A. I did.

Exam. WAY: Now, let me ask you this: What was that request for? Was that for documents, checks, papers and what not pertaining solely to the Pacific Coast Wholesalers' Association or to Mr. Olson's general affairs?

The WITNESS: At first—

540 Mr. GORDON: May I ask if the witness will undertake to state as near as he remembers the conversation in that regard?

Mr. TAYLOR: May I at this point—pardon me for interrupting, but I believe your line of questioning, Mr. Gordon, has had to do with December, 1943?

Mr. GORDON: Yes.

Mr. TAYLOR: At the time Mr. Anderson called in the offices of Mr. Olson, it was upon direction of the Commission to make a field investigation.

Now, this subpoena that we are now speaking of has, as I understand it, has to do solely with this hearing, and I fail to see the appropriate position of December, 1943, entries or the first entries by Mr. Anderson into the office of Mr. Olson, all of the possible time element there being removed from this hearing.

Mr. GORDON: Well, just this, that the testimony of Mr. Anderson, as I listened to it, was voluntarily given by him.

If it had nothing to do with this hearing, I don't know why he put it in, but he did put it in, and I submit that the statements which he made left a clear inference that there had been a willful refusal by Mr. Olson to show him the records he asked for, including Mr. Olson's personal records pertaining to the operations of his office, in which he carries on the business of P. C. W. A. affairs. Now I think, as I stated to the Examiner a moment ago, that we are entitled to produce such evidence that will put it in the proper light.

541 Exam. WAY: You had better proceed along with the questioning and save time, and get through with it.

(Question and answer read.)

Mr. GORDON: I believe I asked the witness to relate as near as he remembered the conversation that was had at that time between Mr. Anderson, himself, and Mr. Olson.

Mr. TAYLOR: What time is that?

Mr. GORDON: The occasion of his first visit to the office of Mr. G. A. Olson in December, 1943.

The WITNESS: The first morning that Mr. Anderson was in, he talked to Mr. Olson and myself, explaining what he wanted, and what records he desired to see, his job being to trace a particular shipment from origin to destination, and we explained all the different motions similarly to what we have explained here. And that was gone into at some length.

And then he told Mr. Olson that he would want his private records, and there was some conversation about that, and I believe Mr. Olson said, "I can't believe you are serious", some remarks of that kind. So, then, we started to get the records of a typical shipment.

Q. Was anything said by Mr. Olson or you with respect to personal records?

A. No. As I say, there was a lot of remarks and speech dropping and we went on investigating freight movements of P. C. W. A.

Q. Did anyone suggest they go ahead and look at
542 the general P. C. W. A. records?

A. Yes.

Q. Who suggested that?

A. Mr. Taylor and Mr. Olson were both present, and Mr. Olson told me to go ahead and pick a typical shipment. I asked Mr. Taylor to pick the typical shipment, because I didn't want him to think I had anything planned. So he went and asked Mr. Anderson to pick, and he picked a shipment in 1942.

Q. Was any other discussion had at that time with reference to Mr. Olson's production of his records?

A. No, I don't recall any except preliminary discussions.

Q. And that discussion, as I understand it, was to the effect that Mr. Anderson asked for them and Mr. Olson said something to the effect "You are not really serious about that"?

Mr. TAYLOR: We were, of course, speaking at that time of the Pacific Coast Wholesalers' Association business, were we not, Mr. Matthews?

The WITNESS: You were speaking of both the Pacific Coast Wholesalers' Association business and of Mr. Olson's private affairs.

Mr. TAYLOR: And what do you mean by "Mr. Olson's private affairs"?

The WITNESS: The business that he operates.

Q. (By Mr. Gordon) What was that discussion about? Did they talk about his books and records?

543 A. Yes, they said they would like to see all his records, all receipts and disbursements.

Mr. TAYLOR: As general manager for Pacific Coast Wholesalers' Association?

The WITNESS: I don't recall the exact language he used.

Mr. TAYLOR: Well, you were present, weren't you, Mr. Matthews? You seem to recall.

The WITNESS: Well, they were going there to investigate P. C. W. A., yes.

Q. (By Mr. Gordon) Did you ever hear any further mention made of the production of Mr. Olson's personal records pertaining to the office in which he conducts the management of P. C. W. A. affairs or any of Mr. Olson's personal records?

A. As I stated, Mr. Anderson and myself were occupied several days with P. C. W. A freight account and related files, and Mr. Anderson left, and then he returned and picked up some papers that we promised to have ready, and I believe he had a closing conversation in Mr. Olson's office before he left.

Q. Were you present at that time?

A. I was present most of the time.

Q. And at that time was anything said about Mr. Olson's personal records?

A. He said—

Q. Wait a moment. Was there anything said about Mr. Olson's records?

A. Yes.

544 Q. Who was present in that conversation?

A. Mr. Anderson, Mr. Olson, and myself.

Q. Will you relate the conversation as near as you can, giving the words you remember, and if you don't remember the words, give the subject of the conversation.

A. That is, just referring to Mr. Olson's personal records?

Q. Yes.

A. As I recall it, Mr. Anderson said to me that he had secured enough information and he didn't want those personal records, he would make his report from what he had obtained from us.

Q. Did Mr. Olson say anything one way or the other?

A. I don't recall that he did. He agreed with it.

Q. Did he ask Mr. Anderson whether he wanted or didn't want the personal records?

A. Mr. Anderson made a statement that he didn't want them, and Mr. Olson just agreed with him. I don't recall any conversation.

Q. Was there anything else that you recall at that time concerning the personal records?

A. That is all I can recall.

Q. Now, Mr. Matthews, I will ask you if you recall an occasion during the period that Mr. Anderson was at the office of Mr. Olson in December, 1943, when a request was made by him for information as to the number of stations maintained, the number of employees—

A. Yes.

545 Q. —at the various stations?

A. Yes.

Q. And was there anything at that time said by Mr. Anderson as to whether he wanted the totals—or, what did he say, that you recall now?

A. He wanted the number of employees and to designate their occupations. We started—Mr. Olson started to give him the names of the employees. He said, no, that wasn't necessary. He just wanted to know—the name of the rate clerk at Seattle, and whether that information was furnished him, I am not sure, and it seemed to me that he didn't want to know the individual salaries or the total of the salaries paid.

Q. Do you recall anything else said in connection with that conversation?

A. Not at the moment, I don't.

Q. Was that during the three or four day session that

occurred when Mr. Anderson first came to the office and then came back day after day, or was that later?

A. I think that was later, the day that he was leaving.

Exam. WAY: About what date?

The WITNESS: I don't remember.

Mr. GORDON: I think it was about the 14th of December, Mr. Taylor? Wasn't that the date?

Mr. TAYLOR: Shouldn't you ask Mr. Anderson?

Mr. GORDON: Mr. Anderson, I think there is an
546 error, and perhaps the record would show.

Q. (By Mr. GORDON) Mr. Matthews, aside from the conversations that you have related, do you recall any other conversation at all that transpired between Mr. Anderson and yourself or Mr. Anderson and Mr. Olson regarding the office records or the data pertaining to Mr. Olson's Office?

A. No, sir, I don't.

Mr. AMES: Mr. Examiner, I submit on the question whether there has been a compliance with the subpoena, this testimony, going back to 1943 on a subpoena dated January 20, 1945, is wholly irrelevant.

Exam. WAY: I have observed that and so stated. However, the only reason that I have permitted it to go in was to secure to Mr. Gordon the full opportunity to present whatever he may have, but I do think that it is wholly irrelevant as to what happened in 1943.

Mr. GORDON: I will be glad to stipulate that all Mr. Anderson's testimony concerning that might be stricken out, and Mr. Matthews' version be stricken out, if that will suit the Commission and counsel.

Mr. TAYLOR: We are not agreeable to that, of course.

Mr. GORDON: Well, then, now, may I—I insist as counsel—

Exam. WAY: Proceed. You are wasting time arguing.

Mr. GORDON: I merely wanted to answer the argument of counsel.

547 Q. (By Mr. GORDON) Now, Mr. Matthews, I believe it is established here of record as to when the subpoena was served upon Mr. Olson. Do you recall whether or not that subpoena was brought to your attention at or about the time it was served?

A. At the same time.

Q. And did you at that time have other work and duties in the office in your usual performance of duties there?

A. Yes.

Q. And what did you do, if anything, either during office hours or after office hours with reference to arranging to comply with this subpoena, to assist Mr. Olson in complying with this subpoena?

A. Checked the records, where they were and what volume.

Q. Well, did you spend much or little time at that?

A. Quite a bit of time. Two different occasions. I made measurements and considered how much space it would take up.

Q. Now, do you know anything about Mr. Olson's personal records?

A. Well, I have access to his check book, yes.

Q. Do you know all of the records that he has pertaining to his office?

A. No.

Q. You don't know how long it would take to segregate the personal affairs from the—that is, strictly per-
548 sonal affairs from those that pertain to his business, do you?

A. I wouldn't know.

Q. Would you know anything about the segregation of his office affairs which pertain to P. C. W. A. from the office records which pertain to other business handled by Mr. Olson in that office?

A. It is all intermingled, all receipts and all disbursements.

Q. Did you hear the statement of Mr. Anderson that it would take more than a week to make a complete segregation and audit of that information to determine what portion of Mr. Olson's office pertains to P. C. W. A. business?

A. Yes, I heard that.

Q. From your knowledge of the records and the work, do you agree with that statement?

A. Mr. Olson would have to identify the items, and if he would identify the items, it would not take a week. There isn't that many checks to list there or that many vouchers.

Q. Would it take several days?

A. I would say it would take two days.

Q. And you are at the office every day?

A. Yes, sir.

Q. And you see Mr. Olson when he is there, do you?

A. I do.

Q. Do you know whether he has duties that occupy his time in managing and looking after his office affairs?

549 A. Yes.

Q. Will you state whether or not since the service of this subpoena the time was available to either Mr. Olson or to yourself as his assistant, or to both of you put together to literally comply with this subpoena, and assemble and bring to the courtroom all of the records pertaining to P. C. W. A., including all of Mr. Olson's office records, segregated from those that pertain to matters having no relation to P. C. W. A.?

A. It couldn't have been done except by closing the office.

Q. By closing the office and virtually stopping business?

A. Moving the entire thing up here.

(A short recess.)

Exam. WAY: All right, gentlemen, come to order, please.

Q. (By Mr. GORDON) Just to clarify something Mr. Matthews, that was discussed yesterday, will you state for the record what carload rates are paid by P. C. W. A. to the railroads for the various types of carloads that are shipped by P. C. W. A.?

A. (No response.)

Q. Now, you have five particular breakdowns of cars, do you not?

A. Five or six.

Q. You have $1.10—

A. $1.10, $1.38, $1.49, $1.54, $1.67, $1.78.

Q. That makes six.

A. I did not mention $1.12.

550 Q. Do you know, Mr. Matthews, and if you do know, will you state which of the types of cars that you have just mentioned, included in the shipments of Colyear Motor Sales Company?

A. That would be freight in all of the carloads I mentioned—the carload rates I mentioned.

Q. Is there any one of the other types of cars that would contain the most of their freight?

A. The majority of their freight would be in a $1.67 car.

Q. Would there be substantial amounts in the other cars?

A. Yes.

Exam. WAY: Substantial amounts of what?

Mr. GORDON: Of freight.

Exam. WAY: At different rates?

The WITNESS: Yes. In the $1.10 car there would be bolts, nuts, pipe finishing and pipe cement and lubricating oil, all of which Colyear receives.

Exam. WAY: And that takes the rate of $1.67?

The WITNESS: No, $1.10. Colyear has freight in all different class cars, but the majority of their freight would be in the $1.67 car.

Q. (By Mr. GORDON) That is all the questions I have.

Exam. WAY: Have you got the tariff numbers involved in these proceedings that I requested yesterday?

The WITNESS: I have.

551 Exam. WAY: What are they?

The WITNESS: The one that you requested covers the charge made by railroads at Chicago for loading freight into pool carloads. The rate is 3¾ cents per 100 pounds, named in the Illinois Freight Association Tariff 25-FICC413. And Mr. Ames asked for the references to the forwarders' tariffs. There are six tariffs covering the carload rate from the east to the Pacific Coast issued by the Freight Forwarders Tariff Bureau, Incorporated, James Farrell, Agent. Each one of them carried the designation: "Westbound Tariff".

Exam. WAY: Did you get the I. C. C. numbers?

The WITNESS: I. C. C. FF Nos. 1, 2, 3, 4, 5 and 6.

Exam. WAY: Cross examine.

Mr. AMES: I have only one question, but I wish at this time in connection with the assertion that there would not have been possible time between the subpoena date and the hearing date to comply with the subpoena, I wish to call your attention to a letter dated January 10, 1945, on the letterhead of Wheat and May, Attorneys-at-Law, signed jointly by Carl I. Wheat, Washington, and Hugh Gordon, Los Angeles, California, objecting to a request by the Freight Forwarders' Institute that this hearing be postponed.

Among other things, that letter states:

"As already stated, the Commission is already in possession of all the facts for which it has asked. We

552 believe it now has available every fact of any relevancy in respect to these operations."

Exam. WAY: Who is that signed by, Mr. Ames?

Mr. AMES: By Carl I. Wheat of Washington.

And in the body of the letter the attorneys recite that they "welcome such an inquiry and earnestly desire an early hearing and determination of this proceeding."

Q. (By Mr. AMES) Now, I want to ask this question, Mr. Matthews, with respect to the item of correspondence, The subpoena to Mr. Olson recites in the second paragraph

that he is to appear and bring with him "all letters, correspondence, and memoranda passing between yourself and members and prospective members of said Association."

Did I understand you to say on your testimony here that that correspondence would be commingled with other correspondence?

A. No, sir, I didn't mean it that way.

Q. Would that correspondence be difficult to segregate?

A. No, sir.

Q. And were you instructed by Mr. Olson to produce it at this hearing?

A. No, sir.

Q. You were not?

A. I wasn't.

Q. So far as you are concerned, it is not in this hearing room?

553 A. I know it is in the hearing room and has been every day.

Q. It is in the hearing room in response to the subpoena, correspondence between Mr. Olson and members and prospective members of the Association?

A. Mr. Olson has it.

Mr. AMES: Will you produce it?

Mr. GORDON: I am not in a position to say whether it will be produced or not.

Exam. WAY: Well, we have got to come to a conclusion some time about it. This hearing is about to close.

Mr. GORDON: We have some other evidence of a general nature to put in.

Exam. WAY: All right. Go ahead and put in your evidence, and as soon as we get through with that, we will decide whether you put it in or not,—I mean, you will decide.

Mr. AMES: That is all.

Mr. GORDON: That is all the questions I have. I just want to make this statement for the record in response to the statement by counsel for the Forwarders Institute. The subpoena served upon Mr. G. A. Olson are subpoenas. There were two served on the same date, both bearing the affidavit of service of Mr. W. R. Taylor, showing they were served on January 19, 1945.

Mr. AMES: Did you or Mr. Wheat ask for a postponement so that you could comply?

554 Mr. GORDON: Certainly we did not. We asked on January 10 that the hearing be not postponed.

Mr. AMES: And after you were served with the subpoena, you did not make a request for a postponement?

Mr. GORDON: We did not.

Exam. WAY: Who are you employed by?

The WITNESS: Mr. G. A. Olson.

Exam. WAY: What are your duties?

The WITNESS: General supervision of the office and assistant to Mr. Olson.

Exam. WAY: What matters do you handle other than that of the Pacific Coast Wholesalers' Association?

The WITNESS: I handle rate matters for various clients, advice, rate applications.

Exam. WAY: You have a large clientele?

The WITNESS: Fairly large.

Exam. WAY: You audit freight bills for firms and associations in the city?

The WITNESS: Yes, we do.

Exam. WAY: Are you paid from the funds of the Pacific Coast Wholesalers' Association?

The WITNESS: No, sir.

Exam. WAY: Paid by Mr. Olson?

The WITNESS: Yes, sir.

Exam. WAY: That is all.

(Witness excused.)

555 Mr. TAYLOR: At this point, for the purpose of clarity, inasmuch as I dislike to extend the record, along that same line, I believe it would be well to recall Mr. Anderson for the purpose of refuting to a large degree the statements that Mr. Matthews made. However, I will leave that to the Examiner's judgment as to what the differences are, whether certain things were said at the December, 1943 field entry of Mr. Anderson. I fail to see the importance of conversations had at that time, although the record certainly does need to be cleared up somewhat, if any importance is attached to it by the Examiner.

Exam. WAY: I don't feel that it is at all relevant in this case. I don't believe any purpose will be served recalling Mr. Anderson as to what was said or done back in 1943.

Mr. TAYLOR: That was my opinion. Thank you.

Exam. WAY: Are you through?

Mr. TAYLOR: Yes, sir.

Exam. WAY: Do you rest?

Mr. TAYLOR: Yes, sir.

Exam. WAY: Do you have any witnesses, Mr. Gordon?

Mr. GORDON: No, that is all that we have.

Exam. WAY: Does anyone have anything to offer?
(No response.)
Exam. WAY: Have you anything, Mr. Ames?
Mr. AMES: No, I have no affirmative evidence.
556 Mr. TAYLOR: Mr. Examiner, I believe I shall recall Mr. Anderson for the purpose of clearing up this subpoena matter.
Exam. WAY: All right.
Mr. TAYLOR: And I should like to state preliminary thereto that after serving Mr. Olson with the subpoena *duces tecum* on January 19, two or three days later Mr. Gordon called the Bureau of Service, whose telephone is in the P. E. Railroad Building in Los Angeles, where I maintain temporary offices, and asked that I get in touch with him, which I did the very next day.
And in that telephone conversation Mr. Gordon complained that the subpoena served on Mr. Olson was so complete, so comprehensive, that, in his words, "It would take a truck to deliver all the records to this hearing room", and asked if we could reach some agreement whereby the terms of that subpoena might be modified. He explained to me that the great bulk of Mr. Olson's records consisted of individual car record files. I informed Mr. Gordon that we certainly did not wish to impose an undue burden upon Mr. Olson and that undoubtedly Mr. Anderson, upon his arrival in the city, could make some arrangements with Mr. Olson as to what shipping car records must be brought to the hearing. And I advise Mr. Gordon that we wished only representative shipments, insofar as the carload transportation operations were concerned. At that time I made
557 it clear to Mr. Gordon that we must insist that all correspondence files of Mr. Olson as general manager for Pacific Coast Wholesalers' Association from the first organization date must be supplied on that subpoena, and I did make it clear that we expected Mr. Olson to furnish all books and ledgers relative to operations of P. C. W. A. in which he appeared as manager.
I advised Mr. Gordon that Mr. Anderson would come to his office and I was instructing him—that I would accompany him as soon as he arrived from San Francisco.
Mr. Anderson did arrive, I believe it was January 30, and we attempted to get in touch with Mr. Gordon that date, and we did later by telephone, did get in touch with him. He was otherwise engaged, but we saw Mr. Gordon in his office about nine o'clock the next morning in accordance with his suggestion

Now, I should like to put Mr. Anderson on the stand at this point and ask him to state at that time what he advised Mr. Gordon—what records he advised Mr. Gordon we must have at this hearing.

Exam. WAY: Take the witness stand.

H. B. ANDERSON, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Will you proceed, Mr. Anderson?

A. As explained by Mr. Taylor, we called on Mr. Gordon on Wednesday, January 31, which call was made at
558 Mr. Gordon's request and for the purpose of determining, what, if any, relief could be afforded in bringing the records to the hearing room as called for in the subpoena, as Mr. Gordon had explained to bring all of the records called for would require a lot of work and be a truckload or more.

After talking with Mr. Gordon about this, he was advised that we would do what we could to relieve them of as much work as possible in connection with this, but that I wanted it understood that we would want all of the records at this hearing pertaining to Pacific Coast Wholesalers' Association's operations, including those of Mr. G. A. Olson, general manager, pertaining to P. C. W. A. operations, and the corresponding files, contract files, *et cetera*.

It was arranged then that I call at Mr. Olson's office and see Mr. Matthews, whom Mr. Gordon said he would call on the phone, which he did that day.

In talking with Mr. Matthews about this, I agreed with the understanding that the records would be produced on short notice if required, that it would be permissible for them to bring to this hearing room the individual files or records on each car shipped for the year 1944, the month of December, 1943, and the month of December, 1942. These car record files are possibly the most voluminous records maintained and take up a lot of space, and they are more or
less the same—that is, the records in them are the
559 same. They are just a complete record of the freight bills, manifests, and so forth, of the shipments contained in each car.

Then at that time I stated to Mr. Matthews that we also wanted the contract files and correspondence files. He stated that he was just in charge of the accounts there, and that those files were—I think he said we would have to see

Mr. Olson about those files, and I said I had already mentioned to Mr. Gordon what we wanted, and assumed Mr. Gordon would relay the information to Mr. Olson, as Mr. Gordon is the man that asked us to come there.

Exam. WAY: Does that complete your statement?

The WITNESS: I think that is all.

Q. (By Mr. TAYLOR) What was done with respect to correspondence, if any additional conversation was had, Mr. Anderson, besides the conversation had with Mr. Gordon relative to correspondence files?

A. Well, the first day of this hearing I asked about them. I also asked about the contract files. And there have been numerous conversations—I asked Mr. Matthews about them—and there have been numerous conversations, as has been recited here, between Mr. Gordon and others, with respect to these records of Mr. Olson, which he maintains in connection with P. C. W. A. operations, and I think the record is clear on that.

Q. And last Sunday morning, February 4th, you came up to this hearing room and spent several hours, did
560 you not, in examining upon your first opportunity, the records which were produced under Mr. Olson's subpoena?

A. I did.

Mr. GORDON: You mean the records that were left in the courtroom here to be produced, do you not?

The WITNESS: I mean the records that were here.

Mr. GORDON: In the courtroom?

The WITNESS: In the courtroom, which I understood were brought here in compliance with the subpoena.

Mr. GORDON: That is correct, and were left there for your inspection.

The WITNESS: That is right.

Q. (By Mr. TAYLOR) Now, did you, upon examination of those records, find that the general correspondence files of P. C. W. A. covering operations for the years 1942, 1943, and 1944?

A. There were no general correspondence files.

Q. Did you find in those records original contracts executed by Mr. Olson as general manager for P. C. W. A.?

A. There were no contract files there.

Q. I believe that is all, Mr. Anderson.

Cross Examination.

Q. (By Mr. AMES) Mr. Anderson, when you testified last, I asked the direct question whether you had questioned or requested of Mr. Olson the production of the corre-

spondence files mentioned in the subpoena of the
561 Commission, namely, the correspondence with members, or prospective members and you said you asked for the production of those? Is that correct?

A. Correct.

Q. You also testified that at that time it had not been produced?

A. Yes.

Q. Have you up to about a half an hour ago had any indication that this correspondence would be made available to you?

A. I have not.

Q. Assuming that the correspondence was tendered a half an hour ago, would you have any opportunity prior to the conclusion of this hearing to check this file as to its completeness?

A. Not ever having seen the files or knowing the volume of them, that would be a little difficult to answer. Some of the records are rather voluminous, and some of the records pertain to other parts of the operations are rather meager.

Q. And you have heard the statement of Mr. Olson's counsel that he hasn't yet made up his mind whether he will ever produce them?

A. I did.

Q. That is all I have.

Exam. WAY: You are excused.

(Witness excused.)

Exam. WAY: Are you through, Mr. Gordon?

562 Mr. GORDON: I defer to counsel for the Commission. Do you rest, Mr. Taylor?

Exam. WAY: He rested a long time ago.

Mr. GORDON: I know, but he apparently had "unrested" and opened his case.

Exam. WAY: Have you rested now, Mr. Taylor?

Mr. TAYLOR: Do I understand, Mr. Gordon, that you are going to furnish for this record photostats of all of the minutes of the Board of Directors, of the meetings of the Board of Directors, and members, since incorporation?

Mr. GORDON: I thank you for calling that to my attention. I would have overlooked it. I have had in the courtroom here available for our use the original minute book of the Pacific Coast Wholesalers' Association. There were previously furnished to Mr. Anderson copies of the original articles and of the original by-laws, also what purported to be a true and correct copy of the minutes of the first meet-

ing. The copy that I furnished to Mr. Anderson was prepared and drafted by me, setting forth in the usual manner the whole proceeding as though it had happened. There were some modifications of those minutes by the Board of Directors at the meeting, and I am sorry to say that we did not send Mr. Anderson the corrected copy. The correction, however, was very slight, and I think has no bearing on the issues here. It merely changed the
563 figure in one instance from 15¼ cents to 13, because the billing cost, two and a quarter cents, was included in another paragraph.

Exam. WAY: Are you going to furnish a copy of those for the record?

Mr. GORDON: Yes. I am going to offer that, and they are minutes of meetings that have been held since I asked permission to submit as an exhibit a copy of the articles and by-laws, and the minutes of the meetings of the corporation from inception down to date.

Exam. WAY: That may be done, if you mail it in ten days and address the copies to all the parties.

Mr. GORDON: Will that be given an exhibit number?

Exam. WAY: No. That will be an exhibit number after I receive it.

Mr. GORDON: I will comply with the Commission's order in that respect.

Exam. WAY: Mr. Jensen, will you take the stand for a few minutes, please?

ELMER JENSEN, recalled as a witness, having been previously duly sworn, testified further as follows:

Examination.

Q. (By Exam. WAY) There are just a few things I want to ask you about. You are president of the Pacific
564 Coast Wholesalers' Association?

A. Yes, sir.

Q. And a director?

A. Yes, sir.

Q. Have you been such since its incorporation?

A. Yes, sir.

Q. Which was what date?

A. They were incorporated in, I believe, the early part of 1944, and took over the assets of the Association in July, 1944.

Q. Do you attend all the directors' meetings?

A. Yes, sir.

Q. Do you preside?

A. Yes, sir

Q. So far as the membership of the Association or the directors, do you participate in any of the profits of the Association, as such, or the profits of the Association derived from its operations other than the so-called savings?

Mr. GORDON: Now, just a moment, if the Examiner please. I will have to object to your Honor's question on the ground that it presumes facts not in evidence. The record shows that this is a non-profit association, and I do not think there is anything in the record showing that the corporation does make a profit on its operations.

Exam. WAY: All right.

565 Q. (By Exam. WAY) Do they make any profit on their organization other than the savings?

A. No, sir.

Q. So your only profits derived by the members or the directors results from the savings of the operations conducted by Mr. Olson?

A. That is the savings which are paid to the organizations represented by the directors—not the directors. Personally.

Q. Now, is there any one connected with the Association in the capacity of member or director that is directly associated with the operations in any manner? Do you know that?

A. I am not sure I understand, Mr. Commissioner.

Q. You have this Association, which seems to be that of pertaining to the membership, and then distinct from that you have your operations of transporting, which is conducted by Mr. Olson. Now, I am asking you if any of the directors or officers of this Association are engaged directly in the business of transportation in connection with Mr. Olson?

A. No, sir.

Q. Do you supervise in any way any of Mr. Olson's operations?

A. Yes, sir.

Q. How?

A. (No response.)

Q. You have told us here yesterday and the day before that you went down and checked over those amounts

566 to see whether or not you were receiving those savings, and how they appeared? Did you have any supervision over the physical operations?

A. I testified the other day when I was on the stand, Friday or Saturday, of handling of the freight to our Fresno

warehouse where we told Mr. Olson to change the method of delivering at Fresno because it was unfair to us.

Q. That was a principal matter that was in connection with your own business?

A. That is true.

Q. You don't have any supervision over the general affairs of the operating company, do you?

A. Yes, sir.

Q. Well, I mean in the matter of transportation, loading, unloading, and all of that?

A. We employ Mr. Olson to make the contracts for loading in Chicago and transporting of the freight into Chicago, and the arrangements on the Pacific Coast for unloading. The organizer of P. C. W. A. had known Mr. Olson for a long time, and knew he was capable of doing that.

Q. I am not interested in that right now. Did you have anything to do with supervision over any of these physical operations of Mr. Olson, insofar as it pertains to Pacific Coast Wholesalers' Association?

A. We have employed Mr. Olson to do that work for the Association, but at any time we are not satisfied
567 with his services, we can dispense with them.

Q. Have you a contract with Mr. Olson?

A. No, sir.

Q. Verbal agreement as to how—

A. That is by a contract, I assume you meant a written instrument?

Q. I did.

A. We have no such contract.

Mr. GORDON: May I ask, in fairness to the witness, did the Examiner mean by contract, a contract for a definite term of months or years for his employment?

Exam. WAY: Yes, or any other kind.

The WITNESS: No, sir.

Mr. GORDON: Well, I think, as a matter of law, there is an employment contract agreement when a man agrees to work and someone agrees to pay him for it.

Q. (By Exam. WAY) Well, now, as a matter of fact, isn't the situation one in which Mr. Olson has come into your Association and has held out to you that if permitted to do so, that he would assemble and distribute your freight for a specified amount per 100 pounds?

A. You mean that's how our Association started?

Q. Isn't that the general nature of its operation?

A. No, sir.

Q. How is it operated?

568 A. The Association only hires Mr. Olson to handle the physical—that is, to make contracts for the loading, the transporting of the freight is Chicago, and the distribution of the freight on the Pacific Coast, but the Association can change its general manager at any time it likes. So it is not Mr. Olson that set up the Association.

Q. Well, now, when we speak of the Association, there always runs in my mind two elements: First is the membership element, and, second, is the actual operation of the transporting of the goods.

A. Yes, sir.

Q. And I am interested in knowing whether either you or any director or any other officer of this Association have anything to do with the operation of the transportation?

A. We have to do in that we employed Mr. Olson to do it for us, but certainly if we at any time wanted to change in the method of transporting, we can instruct Olson to do so, and he is obliged to make such changes.

Q. Is this a non-profit organization, do you know?

A. Yes, sir, it is.

Q. Non-profit to whom, to the Association?

A. To the Association as such.

Q. Is it operated for non-profit to Mr. Olson, do you know?

A. Mr. Olson is paid a rate per 100 pounds for the

569 handling of the work of the Association.

Q. Do you know what that rate nets per year or for any period of time?

A. Nets to Mr. Olson, personally?

Q. Yes.

A. After paying his expenses?

Q. Yes.

A. No, sir, I do not.

Q. Now, how much of your time is spent in the affairs of the Association?

A. My time personally?

Q. Yes.

A. Not very much.

Q. You are the principal officer?

A. Yes, sir. Not much time beyond the time spent in meetings.

Q. I think that is all the questions I have to ask you.

A. Thank you.

Q. (By Mr. GORDON) Mr. Jensen, in connection with your answer to the Examiner's question as to whether or not you as president and a member of the Board of Directors participate in the supervision of the affairs of P. C. W. A. with its transportation services, isn't it a fact that Mr. Olson, as your general manager, reported to you what arrangements had been made for the assembly of freight at Chicago?

A. Yes, sir.

570 Q. And is that report given consideration by the Board as to whether to approve it or disapprove it?

A. Yes, sir.

Q. And doesn't Mr. Olson also report to you regarding the arrangements made for the loading and the unloading of the freight?

A. Yes, sir.

Q. And he has done so in the past?

A. Yes, sir.

Q. And the distribution of the freight?

A. Yes, sir.

Q. And when the matter of compensation to Mr. Olson has been raised, has that been the subject of discussion by the directors?

A. Yes, sir.

Q. And have you exercised your independent judgment in the approving or the disapproving of the terms of compensation to be paid to Mr. Olson for performing the services of general manager?

A. Yes, sir.

Q. Do you regard him otherwise than as a general manager of the business of the Association?

A. He is the general manager of the Association.

Q. And while you said you did not know what the specific amount that he has received for his services, you do

571 know, do you not, that he bears the cost of maintaining his office and other incidental costs in discharging his duties as manager?

A. Yes, sir.

Q. And do you, as director, have any concern as to how much his net compensation may be for his services and skill and managerial ability after paying his office expenses and costs?

A. We are no more concerned about that than we are of some hundreds of employees in the Colyear Motor Sales Company who are paid on the same basis.

Q. Any more than you are concerned with the amount

of profit that Mr. Butler makes out of his operations as distributing agent at Los Angeles, are you?

A. No, sir.

Mr. GORDON: That is all the questions I have.

Q. (By Mr. AMES) Mr. Jensen, you are a non-profit corporation at the present time, and your testimony now is that you are concerned only with the gross that you pay Mr. Olson and not with his net? Is that your testimony?

A. As far as the Association is concerned, is that what you mean?

Q. Yes.

A. We are not interested in what the net is to him.

Q. The record here before us indicates his gross in one year was somewhat more than $66,000.00. That is his gross.

Now, your testimony today is that as president of
572 this Association, you are not interested in the net?

A. Not in the net to him, personally.

Q. It wouldn't make any difference to you if it was $60,000.00 out of that $66,000.00, is that correct?

A. No.

Q. Would you hire an employee and know he was getting as much as $60,000.00, and stand by without being interested?

A. We have employees who are in a position to make $60,000.00, and we are not interested in what they make.

Q. Don't you keep yourself informed?

A. No, sir.

Q. You mean you have employees with Colyear who make as much as $60,000.00 without your knowing it?

A. I didn't say that.

Q. You as a business man wouldn't see anybody in your organization make $60,000.00 without being interested?

A. We are interested in our contract and how their compensation is arrived at, but their net to them—we have some 600 employees, and we are not interested in their net. It is the gross we are interested in.

Q. You have attended throughout this hearing, have you not?

A. Yes, I have.

Q. And you will agree with me, will you not, that Mr. Olson's income and your savings depend upon the various cost factors that make up this transportation?

573 A. Cost per 100 pounds, yes, sir.

Q. In other words, if the Transport Terminal at Chicago were to do its work for six cents instead of 12, well, your savings would increase, wouldn't they?

A. Yes, sir.

Q. Yet you are not interested enough to know how Mr. Olson handles that terminal in Chicago?

A. No.

Q. You are not?

A. No, sir.

Q. Did you know before this hearing started that Mr. Olson was vice-president of that company?

A. Yes, sir.

Q. Did you know that he owned half of its stock?

A. Yes, sir.

Q. And you are not interested whether that contract could be done for eight cents as it is for twelve?

A. Certainly, if we know we could get that contract for eight, but we don't know of anybody that would do it for eight.

Q. Have you tried to find anybody that would do it for eight?

A. I haven't been in Chicago since the contract was made.

Mr. AMES: That is all I have.

Mr. GORDON: That is all.

Exam. WAY: Anyone else have anything?

(No response.)

(Witness excused.)

574 Exam. WAY: Now, with respect to these records here, are you through with these records?

Mr. TAYLOR: Yes.

Exam. WAY: And you are ready to turn them back to their owners?

Mr. TAYLOR: Yes, sir.

Exam. WAY: I suppose I should say for the record that we have finished with the records that were brought in here, and they are turned over to the respondents.

Mr. GORDON: Very well.

Exam. WAY: A proposed report may be issued in this case, and briefs will be due April 2nd. If there is nothing further, the hearing is closed.

(At 12:00 o'clock noon, February 6, 1945, the hearing was closed.)

* * *

650 Before the Interstate Commerce Commission

Ex Parte No. 160

In the Matter
of
PACIFIC COAST WHOLESALERS' ASSOCIATION
Investigation of Status

Room 3050, U. S. Court Rooms,
Philadelphia, Pennsylvania,
Wednesday, January 15, 1947

Met pursuant to notice, at 9:30 a. m.

Before: LEONARD WAY, *Examiner*.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCES:

Carl I. Wheat, 520 Shoreham Building, Washington 5, D. C., appearing for the respondent.

James L. Givan, 1001 15th Street, N. W., Washington, D. C., appearing for Freight Forwarders' Institute, protestant.

Harry C. Ames, 238 Transportation Building, Washington, D. C., appearing for Freight Forwarders' Institute, protestant.

* * *

652 PROCEEDINGS

Exam. WAY: The Interstate Commerce Commission has set for further hearing at this time and place, Ex Parte Number 160, Pacific Coast Wholesalers' Association.

Are there any additional appearances?

Mr. WHEAT: Carl I. Wheat, 520 Shoreham Building, Washington 5, D. C., appearing with Mr. Hugh Gordon, 612 Citizens National Bank Building, Los Angeles, California, for the respondent.

Exam. WAY: But Mr. Gordon is not present?

Mr. WHEAT: He could not be here.

Mr. GIVAN: James L. Givan, 1001 Fifteenth Street, North West, Washington, D. C., appearing with Harry C. Ames, for the Freight Forwarders' Institute. He is not here yet.

Exam. WAY: Any others?

(No response.)

Exam. WAY: For the information of the reporter, the next page number should be 650 and the next exhibit should be 23.

You may proceed.

Mr. TAYLOR: Mr. Examiner, fellow counselors, and witnesses appearing here: As counsel for the commission, it appears that I should make a brief preliminary statement for the record. You will recall that in February 1945, at Los Angeles, the commission conducted a formal investigation at which it developed information generally looking into the organization, history, financial structure, accounting system, and physical operations of the Pacific Coast Wholesales' Association. In connection with the subject of physical operations, the commission's inquiry at Los Angeles was made relative to carloads as units moving from the point of concentration, the transport terminal warehouse in Chicago, to Los Angeles, and other West Coast destinations. At that hearing the information was that all cars moved on a collect basis, that is to say, the freight charges were paid at the destination to the delivering territory.

653

Mr. WHEAT: I wonder if Mr. Taylor is going to cite the transcript of this statement of purported fact you have just made.

Mr. TAYLOR: No, the purpose of this—for the record, is for the record, and I merely relate that brief history to state at this time what I intended to do when you interrupted me, that the purpose of this hearing and the hearings to be held in Cleveland and Chicago, are for the purpose of developing for the record upon the commission's order, the method of handling P. C. W. A. shipments by the part lot, shippers in the East, who forwarded those shipments on a pre-paying basis or who forwarded them on a collect basis in connection with sales which are considered to be freight allowance or on any basis of shipment by those part lot consignors, wherein the seller of the goods which is usually the consignor, absorbs the cost of transportation which is paid to Pacific Coast Wholesalers' Association.

654

CHARLES KRIPS was sworn and testified as follows:

Direct Examination.

Mr. TAYLOR: Please state your name for the record.

The WITNESS: Charles Krips.

Q. (By Mr. TAYLOR) How long have you been traffic manager for The Yale and Towne Manufacturing Company?

A. Approximately 21 years.

Q. As such, is it your duty to route the shipments of your concern to the various purchasers throughout the country?

A. Ordinarily, unless the consignee might show some preference on his original order. That guides us sometimes.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. No, it is not.

Q. Do you know whether or not your concern has ever been approached for membership?

A. I know of no approach.

Q. Does your concern handle any shipments which are routed to the West Coast over Pacific Coast Wholesalers' Association system of transportation?

A. We have handled some shipments and are handling some shipments by that method.

Q. When did you first commence shipping by P. C. W. A.?

655 A. I really don't know, but I should say it was 2 or 3 years ago. It may have been longer.

Q. Do you recall the circumstances which occasioned your use of the service of P. C. W. A.?

A. Only that it appeared on consignee's orders.

Q. Mr. Krips, did you bring with you today any response to the subpoena the original records which had previously been requested by the commission's special agent, Mr. Rauth?

A. I did. These are the photostatic copies and these are our original paid freight bills and memorandum bills of lading.

Q. How many sets of photostats did you have prepared?

A. Two, one of which I sent to Washington, and the other which I have here. I believe that was all required.

Mr. TAYLOR: I offer in evidence commission's exhibit number 23 consisting of photostatic copies of the documents just referred to by Mr. Krips, that is to say, the memorandum copies of the uniform bills of lading under the printed form of The Yale and Towne Manufacturing Company of the Philadelphia Division, which indicate transportation of part lot shipments from Philadelphia, consigned to Pacific Coast Wholesalers' Association, 900 South Wells Street, Chicago, Illinois, dated from April 23, 1946, to September 26, 1946, to which memorandum copies of the bills of lading are also attached photostats of original freight bills covering such part lot shipments, which freight bills are in

656 the printed form of Pacific Coast Wholesalers' Association, Los Angeles.

Mr. WHEAT: Before that is marked, I think that it is customary to allow the counselor to look at the document.

Exam. WAY: Let it be marked Exhibit Number 23 for identification.

(The documents referred to were marked as Commission's Exhibit No. 23, Witness Krips, for identification.)

Mr. WHEAT: I don't believe you mentioned how many documents were included in this exhibit.

Mr. TAYLOR: I was going to get that from the witness.

Exam. WAY: The exhibit consists of 30 pages.

Mr. TAYLOR: I have just given sets of the exhibit to the representative counsel.

Q. (By Mr. TAYLOR) Mr. Krips, I hand you exhibit number 23, which has been offered in evidence, and will ask you please to advise whether or not the shipments referred to therein are representative of shipments which have been handled by your concern during the past 3 years?

A. They are.

Q. It is noted that the freight bills in the instances offered in evidence here, are all on a prepaid basis. Will you please state whether it is customary for your concern to make all its shipments via the service of P. C. W. A., on a prepaid basis?

A. It has been our usual practice to make these shipments prepaid. It is our sales practice on this type
657 of material, to sell the goods f. o. b. Philadelphia, freight allowed, but so many controversies arose because of incorrect ratings, that we adopted the practice of prepaying the shipments to prevent unnecessary correspondence. As far as we are concerned, it serves the same purpose as though we allowed the freight and deducted on the bill of lading.

Mr. GIVAN: Does that refer to your general practice on all shipments?

The WITNESS: Yes, sir.

Q. Referring to Exhibit Number 23, will you please read the names of the consignees to which these representative shipments have been billed?

A. Ducommun Metals and Supply Company, Los Angeles, California.

Exam. WAY: Just a minute. Are these in the same order? Apparently they are not.

The WITNESS: The first I have is in June.

Mr. WHEAT: You mentioned one of April 23, that I assumed to be the first.

Exam. WAY: Salt Lake Hardware Company.

The WITNESS: I can use this list.

Mr. TAYLOR: Perhaps it would be best at this time for the use of all concerned, to offer in evidence an abstract of the shipments contained in Exhibit Number 23. This abstract, I understand, was prepared by Mr. Rauth, the commission's special agent, in connection with these exhibits which
658 were examined during Mr. Rauth's field investigation and we have sufficient copies for all representatives here.

Exam. WAY: You'd better withdraw this witness for just a minute for the purpose of introducing this exhibit, or he can be sworn where he is and identify the exhibit at this time, if you want to withdraw this witness until you introduce this.

(Witness withdrawn.)

CLEMENS W. RAUTH was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your full name and your official position?

A. Clemens W. Rauth, Special Agent for the Bureau of Water Carriers and Freight Forwarders.

Q. Mr. Rauth, did you, in October or thereabouts, 1946, call upon Mr. Krips, Traffic Manager for Yale and Towne Manufacturing Company, Philadelphia, Pennsylvania, and at that time examine shipping records of transactions of the Pacific Coast Wholesaler's Association?

A. I did.

Q. And in connection with representative shipments which you took note of at that time, did you prepare for this hearing an abstract of those shipments?

A. I did, sir.

Q. Now, I will hand you a statement and will ask
659 if that is the abstract which you prepared?

A. This is an abstract I prepared.

Exam. WAY: Are you going to identify them separately? Discussion off the record.

(Discussion off the record.)

Exam. WAY: On the record.

It will be marked for identification as Exhibit Number 24.

(Thereupon the statement referred to was marked as Commission's Exhibit No. 24, Witness Rauth, for identification.)

Q. (By Mr. TAYLOR) Will you identify those abstracts of shipments?

A. The long one on top is from the shipping documents which are offered in evidence here and the second one is from other shipping documents found in the Yale and Towne Offices.

Q. How are the statements headed?

A. The first one is listed, "Shipments on which transportation charges were prepaid to Pacific Coast Wholesalers' Association, during 1946, and borne in full by the Yale and Towne Manufacturing Company." The second one is a, "List of additional shipments on which transportation charges were paid to the P. C. W. A. and borne by the Yale and Towne Manufacturing Company, Philadelphia, Pa."

(Witness excused.)

Exam. WAY: Off the record.

(Discussion off the record.)

660 Exam. WAY: On the record.

CHARLES KRIPS resumed his testimony as follows:

Direct Examination—continued.

Mr. TAYLOR: I will offer this in evidence—

Exam. WAY: To be marked for identification as Exhibit Number 24.

Mr. TAYLOR: Mr. Krips, I show you Exhibit Number 24, which has been marked and offered in evidence and ask you to confirm the statement to inform the examiner whether or not the remarks of the special agent with respect to all of these charges having been prepaid is factual.

A. It is, sir.

Q. That is to say, each of the 30 representative shipments listed thereon were all forwarded by your concern on a prepaid basis?

A. No, 2 shipments apparently, from my check, went on a collect basis.

Q. Will you identify those 2 shipments?

A. These particular shipments were one to Salt Lake City, under date of June 24, 1946, 152 pounds, $6.36 charges; also a shipment to Mine and Smelter, Salt Lake City, June 25, 1946, 335 pounds, $14.01 charges. I also find on here a third shipment to Salt Lake Hardware Company, Salt Lake City, August 1, 1946, 260 pounds, $11.52 charges.

661 Q. And of the 30 shipments listed on the exhibit, all went forward on a prepaid basis with the exception of the 3 you just enumerated?

A. That is correct.

Q. Now, was there any error in connection with the billing of those shipments as collect shipments?

A. The shipments marked "collect" should have, in all probability, gone forward prepaid. Possibly due to the clerical error that this was an oversight.

Q. Are you satisfied in your mind that those 3 shipments were later adjusted and that freight allowance was given to the consignee in the final settlements?

A. I did not positively check the angle in those separate shipments, but it has been our practice in the past to have the consignee bill us for any collect shipments that should have gone prepaid.

Q. It is your opinion then, that these 3 shipments should also have moved on the prepaid basis?

A. That is correct.

Exam. WAY: Now you have a conflict in testimony; one that witness says these were billed prepaid; one that says they were billed collect. Does Mr. Rauth agree that there is an error in Exhibit Number 24?

Mr. RAUTH: They were obtained from the file which contained paid freight bills.

662 Exam. WAY: And they show they were billed prepaid?

Mr. RAUTH: I don't recall.

Exam. WAY: Your exhibit purports to show these were all paid.

Mr. RAUTH: They were paid by the company. It was in their paid freight bill file.

Mr. TAYLOR: I believe that is the same testimony, Mr. Examiner.

Exam. WAY: Then it is not Rauth's intention to say all these shipments shown on Exhibit 24 were prepaid but merely that the records of the shipper show what were the transportation charges, is that right?

Mr. RAUTH: Possibly I should have said they were paid by Yale and Towne and whether they were prepaid or not, if any of those were found not prepaid, I don't know it.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Mr. Krips, following the prepayment of these charges or the adjustment of the transactions to the consignees on a freight allowance or prepaid basis at a later date, was that final, or was some part of those freight charges later returned to your concern?

A. The transaction was final with us.

Q. As I understand it, Mr. Krips, these shipments moved from Philadelphia to the transport terminal warehouses of the association in Chicago, by what method were
662A they transported to Chicago?

A. Usually by rail.

Q. And, by what rail carriers at Philadelphia did the shipments usually originate?

A. P. R. R. or B. and O.

Q. And did your concern deliver those shipments to the depots of the originating carriers at Philadelphia, or did some truckline deliver them?

A. They were picked up by pickup and store-door arrangements and the carrier.

Q. And your settlement of freight charges on freight paid basis by P. C. W. A., in all instances it is covering the transportation from Philadelphia to the final destination?

A. Yes.

Mr. TAYLOR: I believe that is all, Mr. Krips.

Exam. WAY: Cross examine?

Cross Examination.

Q. (By Mr. WHEAT) What arrangements do you have with the Ducommon Metal Supply Company, Mr. Krips, with respect to the matter of freight charges?

A. On the material in question, we allow them the freight.

Q. That is a written understanding, is it?

A. Yes.

Q. It is a written understanding?

A. Yes.

663 Q. And how long has that condition existed?

A. That I couldn't say.

Q. Did you ever have any written understanding or any other understanding with the Pacific Coast Wholesalers' Association, with the Ducommon Metal Supply Company with respect to this matter?

A. No.

Q. Are the arrangements which your company has with the other consignees mentioned in both Exhibit 23 and Exhibit 24, for identification, similar to those to the arrangements you have with the Ducommon Metal Supply Company?

A. They are.

Q. And in those instances also did you have any arrangement with Pacific Coast Wholesalers' Association as distinguished from these consignees?

A. We did not.

Q. Now, I understood you to say there are some instances in which you send goods collect. I take it from your subsequent testimony that with respect to materials or shipments sent to the consignees shown on these two exhibits for identification, any shipments so sent collect, are in effect, clerical errors and are adjusted later?

A. That has been the case in many instances, yes.

Q. When you make those adjustments do you make them directly with the consignee with whom you have these written agreements.

664 A. In the main, I would say, yes, I think there may have been an occasion where the consignee has referred the charges back to the P. C. W. A. who in return rendered us a subsequent bill, but there are exceptions.

Q. I see. Now, when you used the word prepaid, what did you mean?

A. We mean that we absorb the charges.

Q. Is it a fact then, that in the price which you charge to the consignee for the goods you sell to them, the price is included in the charge, I mean, the freight is included in the charge?

A. Yes, I assume the sales department have fabricated their prices on that basis.

Q. You obviously couldn't send them free across the continent.

A. That is right.

Q. Did you ever ask any of the consignees to return any of these items shown on these exhibits for identification?

A. Return the goods?

Q. No, any portion of these amounts that you paid?

A. No, if they detected any freight which we should have borne and did not, they probably billed us for the freight.

Q. When you say, "They", you mean the consignees?

A. The consignees, yes.

Q. I think you stated in your direct testimony that it was the practice for the consignee to bill Yale and Towne for shipments that were sent collect by error?

665 A. Yes.

Q. Have you ever made any claim against any of those consignees for any amounts of money which are connected with these transportation charges shown on these two exhibits for identification?

A. I know of no claim unless there was a possibility that a duplication of charges had been allowed or something like that.

Q. That would be the kind of thing that comes up in many instances in freight transportation, and as I understand it, your arrangement is entirely with the consignee direct?

A. That is correct.

Q. I notice in looking at the documents contained in exhibit number 23 for identification, that I believe in all instances, Mr. Krips, the materials covered are pulley blocks or chain hoist parts, gears, ratchets, or worms. Is that true?

A. I believe in one or two instances maybe, overhead track trolleys, and maybe chain.

Q. Here is one I notice. Down about the fourth one in Exhibit Number 23 for identification, which would be trolleys, overhead track, iron. What I am getting at, Mr. Krips, and of course the exhibit will show what was included in the particular shipments covered, would it not?

A. Yes.

Q. And do you sell other goods to customers on the West Coast on an f. o. b. Philadelphia basis?

A. We do without freight allowed, on other commodities.

Q. None of those are included in these items that happen to be covered in these exhibits for identification?

666 A. That is right, a different type of material entirely.

Q. But are we to understand that these shipments of other types of materials, so sold f. o. b. Philadelphia, go at least in part to some of those same consignees shown on these two exhibits for identification?

A. Very rarely, if ever. These consignees shown on these records are pulley block or chain hoist dealers, and our other types of commodities are usually handled through other representatives or dealers in the lines more or less as classified.

Q. What about this overhead trolley?

A. That is in the same.

Q. Same category as the others included?

A. Yes, that is right.

Q. And that is sold freight allowed?

A. That is right.

Q. How did you happen to ship these particular shipments, showing as the original consignee, the Pacific Coast Wholesalers' Association?

A. That goes back a long time and I am positive that our consignees have indicated early in this game, that they wanted this routing followed.

Q. They asked you to do that?

A. Yes.

Q. Those were the consignees that asked you to do that?

A. That is correct.

667 Q. And when you said you shipped by P. C. W. A., you were not suggesting that was something like a rail line, or something you meant, did you not, that you named that as the consignee originally, with the sub-title of your own purchasers, as a routing matter?

A. That is correct.

Q. Let me just ask you this. Are the items which are printed on the memorandum bills of lading which are included in Exhibit 23 for identification, generally the items which are sold freight allowed?

A. Yes.

Q. And just generally, what are the nature or the type of items that you sell f. o. b. Philadelphia?

A. Without freight allowed?

Q. Yes.

A. Electric trucks, and electric hoists—scales.

Mr. WHEAT: That is all.

Q. (By Mr. GIVAN) Where you say you prepay shipments, do you mean you literally tender to the Pennsylvania Railroad at Philadelphia—that is to say, the through freight charges to the Pacific Coast?

A. That is correct. If the shipment went by B. and O., and/or Pennsylvania Railroad, we would mark it prepaid ordinarily, and would pay the charges to Chicago direct to the carrier from Philadelphia to Chicago for that portion of the route or trip.

668 Q. But you wouldn't pay the charges beyond Chicago?

A. Charges beyond Chicago would be rendered to us on a bill by the Pacific Coast Wholesalers' Association, showing the total freight, Philadelphia to destination, less the charges prepaid to Chicago.

Q. And then you would—?

A. Honor the second bill.

Exam. WAY: If I understand right, you ship the material by rail and you pay only the charges from Philadelphia to Chicago?

The WITNESS: At the time of shipment to Chicago we prepay the charges from Philadelphia to Chicago. On its arrival at Chicago, the material is then handled to destination, and we receive a total bill, less the prepaid charges to Chicago, from the P. C. W. A.

Exam. WAY: All right.

Q. (By Mr. GIVAN) Is that bill from P. C. W. A. itemized? That is, do they supply you with tariff authority for the charges which they are assessing you beyond Chicago?

A. I don't see any tariff reference on their bills.

Q. In other words, they merely send you a bill with a flat amount on it and you pay it, is that correct?

A. That is correct, except that the rate charged has been in conformity with other rates.

Q. That is to say, the L. C. L. shipment would be the same as—

A. The through rail rate is much higher. I
669 meant that the rates shown on P. C. W. A. bills appear to be the same as other forwarders'.

Q. Have you ever checked to ascertain that fact?

A. Yes, we know the rates.

Q. I am just trying to find out the way it works. I am not being critical, but the bill from P. C. W. A. presented to you covering movement from Chicago to some point on the coast reflects approximately the prevailing direct forwarder rates from Chicago to the coast, is that correct?

A. That is right.

Exam. WAY: And it does not represent the rail rates?

The WITNESS: No, because we have already paid the rail rate to Chicago.

Exam. WAY: I am talking of from Chicago to the coast. It is the P. C. W. A. rate, not the rail rate from Chicago?

The WITNESS: Well, I assume you would call it that because they first list on the freight bill the total rate to cover the entire movement, then they deduct the rate for the initial stage showing the rate for the balance of the trip.

Exam. WAY: Yes, I understand that, but I am trying to determine what the basis of the rate, or the amount which they charge you, and I understand from the questions here that it is not the rail rate from Chicago to the coast, but it is the P. C. W. A. rate.

The WITNESS: Yes, it is the P. C. W. A. rate.

670 Exam. WAY: So, since the P. C. W. A. doesn't publish any tariff, you would have no tariff number or authority?

The WITNESS: Well, our comparison for rates was made in the prevailing rates by other forwarders.

Exam. WAY: All right.

Q. (By Mr. GIVAN) One other question. Have you ever routed freight via P. C. W. A. at Chicago to any consignee except upon specific request of that consignee?

A. I don't think so.

Mr. GIVAN: I don't have any other questions.

Q. (By Mr. AMES) I take it you are familiar with the rate on similar shipments from Philadelphia to Los Angeles?

A. More or less.

Q. And your testimony, as I understand it, is that the P. C. W. A. in final analysis, to wipe out the transactions, bills it, less the freight you have already paid to Chicago, and they credit you with the part of the transportation you have already paid in other words?

A. Yes.

Q. And when you indicate P. C. W. A. as the consignee, you are only doing it on the bill of lading that governs to Chicago?

A. Yes.

Exam. WAY: Do you make shipments to any other consignees other than the P. C. W. A. on the same basis?

The WITNESS: Yes, we do.—

671 Exam. WAY: But does the P. C. W. A. handle any shipments for consignees generally, other than the ones you have named here?

The WITNESS: No, there might be an occasional exception, I really don't know, but as I stated before, we route these P. C. W. A. at the request of specific consignees, who periodically on their orders, specify such routing. Normally, if we were to route a shipment, possibly we might use a carrier who has operated from Philadelphia direct.

Exam. WAY: Any further questions?

Re-direct Examination.

Q. (By Mr. TAYLOR) In response to the question by Mr. Wheat, I believe it is mentioned that in all instances in regard to shipments on Exhibits 23 and 24, those were paid on freight allowance basis via P. C. W. A. upon direction of the consignees, is that correct?

A. That is correct. Now, there may have been an instance where we received an order from a consignee and knowing his practice was to ship by this route, we may have followed the same pattern, but at sometime or other they indicated to us that they wanted—that was the route they most desired.

Q. Now with respect to the photostatic copies of freight bills and the bills of lading contained in Exhibit 23, it is noted that the Salt Lake Hardware Company, the Seattle Hardware Company, Mine and Smelter, and Ducommon Metals Supply Company, are the consignees. Do you
672 know whether or not those consignees are members of Pacific Coast Wholesalers' Association.

A. I do not know.

Mr. WHEAT: We will stipulate that they are.

Mr. TAYLOR: Thank you, Mr. Wheat.

Q. (By Mr. TAYLOR) Mr. Wheat raised the subject of claims. As I understand it, your commodities shipped generally during the past 3 years of which Exhibits 23 and 24 are representative, are pulley blocks, chain hoists with gears, ratchets, or worms, and also trolleys, overhead tracks, iron, or without power wheels, as indicated in the printed bill of lading form. Now, have you had occasion to file any claims with P. C. W. A. for loss of any of those shipments?

A. No.

Q. Have you filed claims with any rail carrier for loss of any shipments?

Mr. WHEAT: You mean these shipments?

Mr. TAYLOR: For any shipments shipped via P. C. W. A.

A. I think we can definitely say we have not.

Q. In connection with any damaged shipments which have been protested by consignees as having been damaged, have you had occasion to file any claims with P. C. W. A.?

A. I can't be definite on that. I am very doubtful as to whether there were any claims of any kind.

Mr. WHEAT: I'd like to ask one or two questions.

Re-cross Examination.

673 Q. (By Mr. WHEAT) In connection with such claims, would it be your practice in shipments of this sort to make the claims yourself, or have the consignee make it?

A. It is rather involved. Terms are f. o. b. Philadelphia, freight allowed, but in many instances, we make claims for our consignees just as a matter of service.

Q. As far as you recollect, you haven't made any claim as far as any claims sent P. C. W. A.?

A. That is right.

Q. When you said that you were dealing with these shipments in this manner, on the direction of your consignees,

but that sometimes you didn't have a separate direction or individual shipment, did you mean that you had standing instructions from these consignees to ship in this manner?

A. No, I don't think they have any standing instructions, but when you do things periodically over a long time you fall in a pattern which is usually followed because it's been satisfactory to the consignee.

Q. But in the first instance you were requested to do it in that way by these consignees?

A. Yes.

Q. When you used the "forwarders", I take it you didn't mean to express any views as to the nature of P. C. W. A. as a transportation entity?

A. I know nothing about P. C. W. A. other than
674 what has been exposed here.

Q. (By Mr. Taylor) As traffic manager of your concern, Mr. Krips, will you please tell us if it is customary for your concern, if it pays the freight charges, to also file claims in connection with loss or damage of your shipments?

A. Well, the theory is no, but as I said, we often do those things regardless of the theoretical procedure, just as a matter of service.

Q. Yes now, in connection with the shipments via P. C. W. A., have you, at any time, been requested by any consignee to assign them claim rights in connection with these shipments?

A. No, sir.

Mr. Taylor: Thank you.

Exam. Way: You are excused, sir.

(Witness excused.)

Mr. Taylor: Exhibits 23 and 24 are offered in evidence.

Exam. Way: Any objection?

Mr. Wheat: No objection.

Exam. Way: They will be received.

(Commissions' Exhibits Nos. 23, Witness Krips, and 24, Mr. Rauth, were received in evidence.)

Exam. Way: We will take a short recess.

(Short recess.)

Exam. Way: Are we ready to proceed?

SUPREME COURT, U. S.

VOLUME II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 112

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

APPELLANTS,

vs.

PACIFIC COAST WHOLESALERS' ASSOCIATION, [illegible] J. JENSEN, PERCY T. LYON, et al.

No. 113

FREIGHT FORWARDERS INSTITUTE,

APPELLANTS,

vs.

PACIFIC COAST WHOLESALERS' ASSOCIATION, [illegible] J. JENSEN, PERCY T. LYON, et al.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED JUNE 11, [illegible]

JAMES P. REESE was sworn and testified as follows:

675 Direct Examination.

Q. (By Mr. TAYLOR) What is your full name?

A. James P. Reese.

Q. Are you in the employ of R. M. Hollingshead Corporation, 840 Cooper Street, Camden, New Jersey?

A. Yes.

Q. In what capacity?

A. Traffic Manager.

Q. How long have you been Traffic Manager?

Exam. WAY: You are appearing here under subpoena?

The WITNESS: Yes, sir.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. I think not. I never heard we were. I feel definitely we are not.

Q. Does your firm make shipments via P. C. W. A. facilities?

A. We have in four instances.

Q. In four instances only?

A. Only, yes.

Q. And during what period of time were those shipments made?

A. Two in 1945, and two in 1946.

Q. What did those shipments consist of?

A. Three shipments were oil, and one shipment was brake fluid and cement. Hydraulic brake fluid.

Mr. TAYLOR: Offered for identification is an ex-

676 hibit consisting of four shipments, that is to say, we have certified copies of freight bills, prepaid freight bills issued by Pacific Coast Wholesalers' Association, to R. M. Hollingshead Corporation, with bills of lading attached.

Exam. WAY: How many pages on that exhibit?

Mr. TAYLOR: Eight pages consisting of four freight bills and four bills of lading.

Exam. WAY: Let it be received and marked for identification as Commission's Exhibit Number 25.

(The documents referred to were marked as Commission's Exhibit No. 25, Witness Reese, for identification.)

Q. (By Mr. TAYLOR) In connection with these prepaid freight bills, Mr. Reese, which are dated in 1945 and 1946, were those shipments made upon instructions of the consignees, that is to the prepay basis?

A. Yes. Our terms of sale are f. o. b. destination which means we assume the freight charges.

Q. And therefore you absorbed in full the freight charges, and there were no adjustments? There were no adjustments with respect thereto in connection with those shipments?

A. That is correct.

Q. Did you have occasion to file any claims for any of these shipments for loss or damage in transit?

A. No, none at all.

Mr. TAYLOR: I believe that is all.

677 Cross Examination.

Q. (By Mr. WHEAT) Did you, in each instance, Mr. Reese, ship as you did on the instructions of the consignee named in these documents?

A. Yes, except in one instance, the freight charges to Chicago were prepaid in error.

Q. I see.

A. But when P. C. W. A rendered their freight bill, they gave us credit for that.

Q. I see. And that is shown on the document, isn't it?

A. Yes.

Q. Do you have some written agreement with this Strevell Paterson Hardware Company of Utah, which I take it is the consignee in each of these shipments dealing with how you sell to them, who bears the freight?

A. Yes.

Q. You have a written agreement with them?

A. Yes.

Q. Do you have an agreement with this P. C. W. A. with respect to any of those matters?

A. No.

Exam. WAY: Which of these documents show the adjustment on that one bill?

The WITNESS: The shipment on January 21, 1946. It is the third shipment.

678 Exam. WAY: I don't have a copy of it.

Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

I will ask the witness what adjustment was made with the P. C. W. A. that you referred to in your testimony?

The WITNESS: They billed us the through charges to Salt Lake City, but credited the amount that we had prepaid to Chicago.

Exam. WAY: And they rendered a bill to you for the balance due—$1.19? Is that it?

The WITNESS: No, that is the amount credited. The balance was $1.59.

Mr. WHEAT: You are speaking of rate per hundred pounds?

The WITNESS: Yes.

Exam. WAY: Now I want you to explain it, Mr. Wheat.

Mr. WHEAT: I think I can explain it, perhaps best by asking Mr. Reese a couple of questions.

Exam. WAY: All right.

Q. (By Mr. WHEAT) Talking of the document dated January 21, 1946, will you state what item is the allowance you mentioned for freight paid by you into Chicago?

A. $1.19 per hundred.

Q. That left how much per hundred?

A. $1.59. Multiplying that by the weight of the
679 shipment made, $23.85, not including tax.

Q. And the total amount that you paid was $24.57, was it not?

A. That is the total amount we paid to the Pacific Coast Wholesalers' Association.

Q. Just for my information, did that amount of tax in the amount of $.72 appear on the P. C. W. A. original statement to you?

A. Yes.

Q. It did?

A. Yes.

Q. Was it marked tax?

A. No, just the three per cent which we understand is taxable.

Q. What does the $23.85 represent?

A. It represents the balance of freight on the basis of $1.59 a hundred.

Q. Is it $1.59 a hundred from Philadelphia to Chicago?

A. No, it is $1.19 a hundred from Philadelphia to Chicago. The through rate is $2.78, and deducting the $1.19 we paid, left the balance of $1.59.

Q. What is the rate of $2.78?

A. That is the forwarders commodity rate on oil at that time from Philadelphia to Salt Lake City.

Q. (By Mr. AMES) May I ask a question?

Exam WAY: Yes.

Q. (By Mr. AMES) Mr. Reese, I hand you a paid freight bill which is a part of exhibit number 25. Are you
680 able to identify that as a shipment made by your company?

A. Yes.

Q. That document is headed, "Freight Bill."

A. Copy.

Q. Opposite the word "carrier", does the name of the Pacific Coast Wholesalers' Association appear—opposite the word "carrier?"

A. (No response.)

Mr. WHEAT: I'd like to get an answer to that.

Mr. AMES: I am going to try to develop it.

Q. (By Mr. AMES) This document that is on the top of exhibit number 25 is a copy that you made from an original freight bill?

A. That is the copy that I had made in my office from that original freight bill.

Q. Now I will ask you to glance at it, the original bill from which that copy is made. How is that headed?

A. Original freight bill, Pacific Coast Wholesalers' Association.

Mr. AMES: Is that what you had in mind, Mr. Wheat?

Mr. WHEAT: Yes.

Q. (By Mr. AMES) From this original bill then, I want to ask whether you are able to identify the figure $2.78 which appears as a first figure opposite the figure 1500?

A. That is a through rate of the forwarders from
681 Philadelphia to Salt Lake City on Petroleum lubricating oil.

Q. From Salt Lake City on that particular commodity?

A. Yes.

Q. And rate per 100 pounds?

A. Yes.

Q. On the final analysis that is the rate you paid?

A. We did.

Q. Now when the Pacific Coast Wholesalers' Association bills you, however, they indicated that $2.78 as a total charge from Philadelphia to Salt Lake City, but they credited you with the $1.19 you had already paid?

A. Yes.

Q. That is all there is to that transaction, isn't it?

A. Yes.

Q. (By Mr. WHEAT) When you speak of Philadelphia rate, you mean from Camden to Salt Lake City?

A. Yes, Camden takes Philadelphia rates.

Q. Did you ever ask the Strevell Paterson Hardware Company to return any part of this money you paid on these four shipments?

A. No.

Q. That wasn't a part of your understanding with Strevell Paterson Hardware Company, that you'd do it?

A. No, our terms of sale are on a delivered basis.

Mr. TAYLOR: I offer in evidence Exhibit 25.

Exam. WAY: Any objection?

682 Mr. WHEAT: No objection.

Exam. WAY: The document marked for identification as Commission's Exhibit No. 25 is received in evidence.

(Commission's Exhibit No. 25, Witness Reese, was received in evidence.)

(Witness excused.)

JAMES T. FORREST was sworn and testified as follows:

Mr. TAYLOR: Mr. Examiner, is there any objection to dismissing Mr. Reese as a witness? He has just testified and says he'd like to get back to his place of business.

Exam. WAY: Yes, he is excused.

Direct Examination.

Q. (By Mr. TAYLOR) What is your full name?

A. James T. Forrest.

Q. Mr. Forrest, are you employed by Keystone Lubrication Company located at Twenty-first and Clearfield Streets, Philadelphia, Pennsylvania.

A. Not at the present time. I am retained as counselor I was vice-president from the period September, 1939 to May 1, 1946.

Exam. WAY: And you are appearing here in summons to a subpoena?

The WITNESS: I am, sir.

Q. In connection with your former employment by the Keystone concern, did you have occasion to handle

683 the shipping papers, that is to say, were you familiar with the execution of bills of lading prepared relative to shipments consigned to Pacific Coast Wholesalers' Association at Chicago, for transportation to the West Coast?

A. I think the best way to answer that would be to say I prepared the franchise. We only have one company that uses this particular P. C. W. A. That is the Galigher Company of St. Louis. We have a general franchise agreement with all distributors prepared, which was prepared by me, and which provides for the shipment of goods. In October of 1944, the Galigher Company wrote us and sent us a form letter that is, on October 14, 1944, sent us a form letter and—entitled Standard Shipping and Routing Instructions, and they listed the procedure which should be adopted with respect to their orders and we have followed that procedure since sending the merchan-

dise to the Pacific Coast Wholesalers' Association, 900 South Wells Street, Chicago, Illinois, in turn receiving a bill from the P. C. W. A. and billing the distributor for the difference in the freight rate charged by that P. C. W. A. which was in contrast with our contract provisions providing we only allow freight rate via the cheapest way.

Mr. TAYLOR: Offered in evidence for the purpose of identity are photostatic copies of prepaid, or photostatic copies of prepaid freight bills issued by Pacific Coast Wholesalers' Association, to which also are attached photostatic copies of bills of lading covering shipments made during the year 1946.

684 Exam. WAY: How many sheets in that exhibit?

Mr. TAYLOR: 28 sheets which represent 14 prepaid freight bills and 14 bills of lading.

Exam. WAY: It will be marked as Exhibit 26 for identification.

(The documents above referred to were Marked as Commission's Exhibit No. 26 for identification, Witness Forrest.)

Q. (By Mr. TAYLOR) In connection with your statement of explanation, will you please illustrate the handling by examining the first prepaid freight bill and give us an explanation of that as to size of shipment, and what it covers, and amount of prepaid charges?

A. This first one is number CSL 915-2, dated August 5, 1946. It is an invoice from P. C. W. A. in the sum of $164.95.

Exam. WAY: You say, "Invoice?"

The WITNESS: Pardon me, it is a freight bill.

Q. That shipment was consigned to Galigher Company, Salt Lake City, Utah?

A. That is correct.

Q. Is their home office St. Louis? I recall you stated in your original—

A. If I did, it is a mistake. It is Salt Lake City.

Q. Are all the other freight bills and bills of lading attached hereto, also of the same general character and consigned to the Galigher Company, Salt Lake City, Utah?

685 A. That is correct.

Q. In connection with these prepaid charges was the transportation final upon the prepayment by your firm to P. C. W. A. of these charges, or was some later adjustment or restitution of freight charges made to your concern?

A. No, the matter was finished in that at the time of sending the bill of lading carrying out the instructions, we, at that time, sent our bill along direct to the Galigher Company, and the bill shows the difference in the freight charges and Galigher and Company is billed at that particular time for the difference in freight.

Q. Thank you, sir. Now, in connection with these shipments, did you ever have occasion to file claims or loss or damage?

A. Not to my knowledge.

Q. And did you, to your knowledge, at any time during the association of yours with this concern, ever have letters or other information from the Galigher Company requesting a credit, that is, a transfer of claim credit for any of these shipments?

A. No, sir.

Mr. Taylor: Thank you.

Exam. Way: What is this total amount, $164.95, represent?

The Witness: That represented the 5,429 pounds of merchandise at the $2.95 rate, with the 3 per cent tax.

Exam. Way: From Philadelphia to Salt Lake?

The Witness: That is correct, sir.

686 Cross Examination.

Q. (By Mr. Wheat) You mentioned some letter you received from the Galigher Company. I wonder if I may see that letter?

Mr. Wheat: Mr. Examiner, it occurs to me that this is a matter that should be interesting to the commission and I will ask this letter, which is short, be copied into the record.

The Witness: I have four copies in case you want them.

Mr. Wheat: I'd like to offer these copies of the letter as Exhibit Number 27, into this record.

Exam. Way: Any objection?

Mr. Taylor: No objection.

Exam. Way: It will be marked for identification as Exhibit Number 27.

(The letter referred to was marked as Commission's Exhibit No. 27, Witness Forrest, for identification.)

Q. (By Mr. Wheat) Let me ask you, did you ever have some arrangement with P. C. W. A., as such as contrasted with the Galigher Company of Salt Lake City.

A. None whatsoever.

Q. You followed the instructions of the Galigher Com-

pany to the letter with respect to the instructions, followed in Exhibit 26?

A. That is correct.

Exam. WAY: How did these shipments move from Philadelphia?

687 The WITNESS: You will notice that in that letter they indicate—well, in paragraph number 3, they instructed us to ship to Chicago via Trans-American Freight Line, Inc. Their service was not satisfactory, and we have been using Lifschits. I believe it is a motor carrier that takes it to the train. We deliver to them.

Q. (By Mr. WHEAT) Mr. Forrest, there was attached to this letter from the Galigher Company to your corporation, which has been marked as Exhibit 27 received in evidence, a form headed, "Uniform Straight Bill of Lading, Original Not Negotiable".

A. I removed that myself.

Q. I think in order to make Exhibit 27 intelligible in the record, and complete, it would be preferable to have these copies. I happen to have several copies here which are exact printed copies of the same document and I should like to ask that that document be received in evidence as Exhibit Number 28.

Exam. WAY: That will be made a part of Exhibit Number 27.

The WITNESS: That doesn't correspond exactly. On the side it has, "To be prepaid," crossed out and "Collect to Chicago, P. C. W. A. to bill shipper". It is on the side here.

Mr. WHEAT: May I suggest, Mr. Examiner, that on the second page of what is now Exhibit Number 27, the words on the right hand side about half-way down the right hand line, the words, "To be prepaid," were crossed out in the specimen sent to the Keystone Lubricating Company

688 by the Galigher Company, and was inserted, "Collect to Chicago, P. C. W. A. to bill shipper."

Exam. WAY: If there are no objections, you have changed the original exhibit.

Mr. WHEAT: May I say that with that change the portion in red on the second page of Exhibit Number 27 reads exactly the same as the corrected one that I have just mentioned, is that true?

The WITNESS: I believe it is, I haven't examined it.

Mr. TAYLOR: There is no objection to the balance of the comparison.

Exam. WAY: Thank you.

Mr. WHEAT: I have one or two other questions.

Q. (By Mr. WHEAT) Mr. Forrest, looking at Exhibit 26, I wonder if you could tell us what here is meant by what are apparently pencil marks on the first page which is the original bill, P. C. W. A., dated August 5, 1946?

A. You are referring to "grease," $107.92, charged Tichner, $64.03 charged customer.

Q. Yes, and then a total?

A. $164.95. Well, Mr. Tichner was the sales representative or engineer handling this particular account. His expense account is charged with amount of $100.92, being the lowest freight rate to Salt Lake City, charged customer $64.03 is the amount Galigher Company was charged back.

Q. And that is all under a direct arrangement be-
689 tween your company and the Galigher Company?

A. That is correct, sir.

Q. Just one moment.

Exam. WAY: That doesn't have anything to do with the freight or transportation charges?

The WITNESS: Yes it does, it is a breakdown of the transportation charges.

Exam. WAY: Well, that is a matter only for your own information in the settlement with the consignee?

The WITNESS: That is for our own books and records. That is correct.

Exam. WAY: So far as the transportation company is concerned, they know nothing about that matter?

The WITNESS: Nothing whatsoever.

Exam. WAY: That was put on there by—

The WITNESS: By the order clerk.

Exam. WAY: In other words, it is not a part of the freight bill?

The WITNESS: No, it is just a distribution.

Q. (By Mr. WHEAT) And wherever such items appear on documents obtained on Exhibit Number 26, your answer would be identical?

A. That is right.

Exam. WAY: I'd like to have somebody develop the details of the sales and settlement where these things are charged back or what the arrangement is.

690 The WITNESS: Well, I have an abstract here from our distributor's agreement with Galigher and Company, and I believe that goes into the record. Do you want me to read the whole thing?

Exam. Way: Yes.

The Witness: "Fifth. Seller's terms of sale to the buyer, excepting lubricating devices or appliances and BB Fittings, shall be: Net Cash the fifteenth of the month following date of invoice, no discount for cash payment. Shipments of lubricating devices or appliances, including BB Fittings, are strictly f. o. b. Philadelphia. Due to abnormal shipping conditions now existing because of the war, the seller agrees on shipments of Lubricating Greases and Penetrating Oils, Lubricating Oils, Motor Oils and Cutting Oils, to arrange for-'North Coast' pool car shipments between the buyer and other distributors of the seller's products in the same geographical area or in the same or adjacent trade areas. On such 'North Coast' pool car shipments, the seller agrees to allow the 'North Coast' pool car rate on shipments of 450 pounds or more on said products f.o.b. Salt Lake City. All shipments of less than 450 lbs. gross weight are f.o.b. Philadelphia. In the event of emergencies, the seller will agree, on orders of 450 pounds or more gross weight, to ship these LCL to the buyer and the buyer agrees to pay the difference on such emergency shipments between the 'North Coast' pool car rate and the LCL rate.

"The seller also extends to the buyer the privilege
691 of specifying shipments of 450 pounds or more direct to a customer in the buyer's trade area, allowing the actual Philadelphia, Pennsylvania, to Salt Lake City, Utah, 'North Coast' pool car rate, but the seller will debit the buyer with any freight rate in excess of the Philadelphia, Pennsylvania, to Salt Lake City, Utah, 'North Coast' pool car rate as herein stated.

"It is understood and agreed, however, when shipping conditions again become normal that the seller's terms in connection with the above identified lubricants shall be, 'Seller agrees to allow combination Panama Canal-rail freight rate on shipments of 450 pounds or more gross weight f.o.b. Salt Lake City, Utah, but not on quantities of less than 450 pounds. Such shipments of less than 450 pounds gross weight are f.o.b. Philadelphia. The seller extends to the buyer the privilege of specifying shipments of 450 pounds or over direct to a customer in the buyer's trade area, allowing the actual Philadelphia, Pennsylvania, to Salt Lake City, Utah, combination Panama Canal-rail freight rate, but the seller will debit the buyer with any freight rate in excess of the Philadelphia, Pennsylvania, to

Salt Lake City, Utah, combination Panama Canal-rail freight rate as herein stated."

Exam. WAY: All these shipments were made under the terms of that agreement?

The WITNESS: Yes.

Q. (By Mr. GIVAN) On the first freight bill appear-
692 ing in your Exhibit 26 dated August 5, 1946, you showed a rate $2.95. Does that purport to be through-rate Philadelphia-Salt Lake City?

A. I believe that is the rate which became effective August 5, 1946. There was a change of rate.

Q. Whose rate is that?

A. I imagine that is P. C. W. A. rate. I don't know. It is their invoice.

Q. Well, have you attempted to compare it to know whether it is a rail rate or what?

A. No reason to do it because under the contract we have an established rate that we allow.

Mr. GIVAN: I see.

Mr. AMES: By that agreement that you read into the record, Mr. Forrest, will you sum up in a few words what your company is doing? You are really protecting yourself on the lowest freight rate?

A. That is it, exactly.

Q. You paid on the strength of the P. C. W. A. freight bill, the gross sum of $164.95 in the first instance, did you not?

A. That is correct.

Q. Later you made adjustments with your customers under the terms of this contract you have read into the record?

A. Not later, sir. We sent the bill out.

Q. Now, Mr. Forrest, this freight bill that refers—
693 A. I can explain that by answering right here. The shipment was apparently made on July 23, 1946, and invoice dated July 23, 1946 was made out to the Galigher Company.

Q. That is by your company to them?

A. To them, yes, and sent to them with a copy of bill of lading. On that invoice appears the amount $64.03 freight charges. So that took place before we received the original freight bill Pacific Coast Wholesalers' Association, because that is dated August 5, 1946, and marked paid August 12, 1946.

Q. That is right on the face—receipted August 12, 1946, for the sum of $160.15, plus 3 per cent. Now the total is $164.95, so previously, and knowing the freight charges which you would pay as a gross sum, and the freight charges which your customer was bound to protect you had made your settlement with the Galigher Company.

A. That is right.

Q. Now that settlement is shown by pencil marks on the freight bill shown as part of Exhibit 26?

A. That is right.

Q. The term "grease," by that you mean that was the lowest freight rate on grease?

A. That is right, sir.

Q. Then you owed the Galigher Company—they owed how much, $64.03?

694 A. That is right.

Q. Because you had paid out a total of $164.95?

A. That we were obligated to pay out.

Q. But you paid direct to P. C. W. A. the gross freight charges of $2.95 a hundred pounds?

A. Plus the tax.

Q. That is right?

A. That is right.

Q. Did you hear the testimony of Mr. Reese and Mr. Krips?

A. I did.

Q. The difference in your situation, or part of the difference in your situation ~~and theirs~~ is that you prepaid to Chicago?

A. That is correct—and according to the instructions.

Q. Now the P. C. W. A. on the shipment to Chicago is the consignee named in the bill of lading?

A. Correct.

Q. And presumably they are the ones paying the carrier the freight?

A. Presumably they are.

Q. (By Mr. WHEAT) When you talked about the lowest freight rate and said these words, "Grease, $100.92," were on the lowest freight rate, did you not mean the lowest carload for the West pool car rate?

A. I believe t[illegible] was under that.

Q. Can you state what that was in dollars and cents?

695 A. I can't.

Q. Those rates vary?

A. Seattle, Los Angeles, and all. I don't have those at my fingertips.

Q. But that is what you meant rather than it was the lowest freight rate.

A. That is right.

Q. In other words, it was the one mentioned in your contract with Galigher and Company?

A. That is correct.

Q. When you spoke of a P. C. W. A. rate, you referred to an estimate received by you from P. C. W. A. which you paid, is that correct?

A. That is correct.

Q. And that is all you referred to?

A. That is all I referred to.

Q. (By Mr. AMES) You could find that by dividing 5429 pounds into $100.92, couldn't you?

A. I assume you can.

Q. Well if you can't, your transaction was wrong, wasn't it?

A. That is correct. That is for the bookkeeping department.

Mr. TAYLOR: Offered in evidence are the freight bills and bills of lading prepared at this hearing by Mr. Forrest for his concern.

Exam. WAY: Exhibit Number 26, if there is no objection, will be received.

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Mr. WHEAT: And I take it exhibit number 27 has been received?

Exam. WAY: And Exhibit Number 27 will be received.

(Commission's Exhibits No. 26 and 27, Witness Forrest, were received in evidence.)

(Witness excused.)

Exam. WAY: We will take a five minute recess.

(Short recess.)

Exam. WAY: Are we all ready? Come to order, please.

HAROLD HUNSBERGER was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Please state your full name.

A. Harold Hunsberger.

Q. Mr. Hunsberger, are you presently associated with Superior Tube Company, Collegeville, Pennsylvania?

A. I am.

Q. In what capacity?

A. Office Manager.

Q. And how long have you been so employed?

A. Since February 28, 1946.

Exam. WAY: And you are appearing here in response to a subpoena?

The WITNESS: I am.

Q. And as office manager, are you familiar with
697 the shipping papers, the routing, and such traffic matters of your concern?

A. Yes.

Q. Do you act, then, in a capacity as traffic manager also?

A. I would say in as much as the order and billing department is under my supervision.

Q. Is your concern a member of the P. C. W. A.?

A. It is not.

Q. Has it ever been?

A. Not to my knowledge.

Q. Does your firm make shipments via the services of the P. C. W. A.?

A. Yes, on certain shipments to one consignee only.

Q. And what consignee is that?

A. Ducommon Metal Supply Company, Los Angeles, California.

Mr. TAYLOR: Offered for the purposes of identification at this time, are photostatic copies of P. C. W. A. prepaid freight bills with photostatic copies of ladings attached, consisting of 20 representative shipments as indicated by the freight bills, and memorandum copies of bills of lading.

Exam. WAY: That is 20 freight bills and 20 bills of lading, making a total of 40 pages?

Mr. TAYLOR: That is correct.

Exam. WAY: They will be marked for identification as Exhibit Number 28.

(The documents referred to were marked as Commission's Exhibit No. 28, Witness Hunsberger, for identification.)

698 Q. (By Mr. TAYLOR) Mr. Hunsberger, it is noted that the freight charges appear to be wholly prepaid from Collegeville, Pennsylvania, to the Ducommon Metal Supply Company in Los Angeles, also in connection with each of these shipments. Can you say whether or not those charges represented on the face of the freight bills actually were paid by your concern? That is to say, was there ever any part of those charges refunded to you by the P. C. W. A., or the Ducommon Company?

A. The only thing that has been refunded to us is the credit shown on these bills which covers portion of the whole from the Reading Company from Collegeville to Chicago.

Q. By Reading Company you are referring to the rail carrier from Collegeville to Chicago?

A. That is right.

Exam. WAY: Where is that shown?

The WITNESS: That is shown on the freight bill as being prepaid into Chicago. The first one, Shipment of October 23, shows $.71 as a deduction per hundred weight, and that allows $2.22 as the per hundred weight rate from Chicago to destination which is the charge assessed on us by Pacific Coast Wholesalers' Association.

Exam. WAY: Well, now the details of that seem to be that you paid the charges into Chicago at the rate of $.71, is that correct?

The WITNESS: That is correct.

699 Exam. WAY: And that left a rate of $2.22 beyond Chicago?

The WITNESS: Exactly.

Exam. WAY: And you also paid that?

The WITNESS: We did.

Q. (By Mr. TAYLOR) Mr. Hunsberger, did your firm have occasion in connection with any of these shipments made during the year 1946 to file claims of any kind with the P. C. W. A. for loss or damage?

A. Fortunately, no.

Q. Did your firm make any assignment to the consignee of claims for loss or damage?

A. Not to my knowledge.

Q. And I believe you said there was no other adjustment in the prepaid charges paid by you to Pacific Coast Wholesalers' Association, other than the Chicago differential just referred to by the Examiner?

A. That is right.

Mr. TAYLOR: That is all.

Cross Examination.

Q. (By Mr. WHEAT) Is it the general practice of the Superior Tube Company to pay the freight on shipments of this nature to the West Coast?

A. I will have to go into a little detail to explain myself. Being associated in the steel industry, we have to use the basing point system and some of our products are

700 sold f. o. b. the appropriate basing point for the material involved in the shipment, and in cases where

the material is sold f. o. b. Collegeville, or say, our mill, then we charge any prepaid charges to the customer. But on the other hand, where they are f. o. b. basing point—may I pick Detroit, for instance—if the material involved is sold f. o. b. Detroit, then we would charge the customer on the basis of the rate from Detroit to Los Angeles, using this as an instance.

Q. Now in these particular instances covered on Exhibit 28, what was your arrangement with the Ducommon Company?—with respect to freight?

A. I see. Well there is no special arrangement. It is in line with our general sales policy as I said on the f. o. b. basis.

Q. Then I take it the price you charge to Ducommon for the materials covered under these documents, included the freight in addition to your basic price?

A. Exactly.

Q. You charge the freight back to Ducommon?

A. That is right. Let me explain further. We charge freight from the customer only on the basis of net weight, not the gross.

Q. Well, however you charge that—it is under an arrangement between yourself and Ducommon?

A. That is right.

Q. You had no arrangement with P. C. W. A., did you?

701 A. None whatever.

Q. How did you happen to ship these shipments via—or naming P. C. W. A. as the consignee?

A. On specific instructions from the customer.

Q. You had received, had you, specific written instructions from the Ducommon Metal Supply Company to proceed in that fashion?

A. That is right. I understand that was some years ago before I got into the game. Unfortunately I don't have a copy of the letter with me, but I know there are standing instructions to that effect that where they designate P. C. W. A. as the method of handling, we follow their instructions.

Q. You designate P. C. W. A. as a consignee and then name Ducommon down below? Is that correct?

A. That is correct. At the bottom, it is marked for reshipment to the "Ducommon Metal Supply Company."

Q. That is the type transaction that you had in mind when you said that you shipped to Ducommon Metal and Supply Company through P. C. W. A.?

A. Exactly.

Q. By prepaid, the use of the word "prepaid," I take it you mean that you stand the freight charges in the first instance before you charge them back to the customer?

A. That is right.

Q. Is this generally the type of arrangement you
702 have with your customers?

A. That is right.

Q. Have you ever asked Ducommon or P. C. W. A. to refund to you any portion of the items paid by you to P. C. W. A. and then charged back to Ducommon?

A. No, not at any time.

Mr. WHEAT: That is all.

Exam. WAY: These charges were all prepaid at your billing station in the first instance, were they not?

The WITNESS: That is right.

Exam. WAY: In other words, you paid the freight charges into Chicago and also paid the freight charges from Chicago beyond?

The WITNESS: That is right.

Exam. WAY: And the freight charges from Chicago beyond?

The WITNESS: That is right.

Exam. WAY: And the freight charges from Chicago beyond were on the basis of the forwarder rate?

The WITNESS: No, it is on the basis of the rate P. C. W. A.

Exam. WAY: That is what I mean.

The WITNESS: Whatever their rate is.

Exam. WAY: Their rate is based generally on the forwarder rate.

The WITNESS: I see. We never have been able to establish on what basis they charged.

703 Exam. WAY: All right. Now, the sale is made, based on, as I understand it, based on the base price plus the freight charge?

The WITNESS: That is right.

Exam. WAY: Any further questions?

Mr. GIVAN: Yes, please.

Q. (By Mr. GIVAN) I am referring to the freight bill, the first of your Exhibit 28, dated October 23, 1946 shows your rate from Collegeville $2.93. I have stated that in the form of a statement. Is that the true rate from Collegeville to Los Angeles?

A. I believe it is.

Q. The rate you prepaid into Chicago is $.71?

A. That is correct.

Q. You were allowed credit for that and billed for the difference of $2.22, plus 3 per cent?

A. That is right.

Q. But that difference of $2.93 was not a rate from Chicago to Los Angeles; the difference over $2.22 was not the through-rate from Chicago to Los Angeles, but the difference of the through rate from Collegeville to Los Angeles, is that correct?

A. That is a matter, I think, on which there is a question. I don't think—take for instance, if you would originate a shipment at Collegeville and send it through to Los Angeles straight, you'd have a different rate than if you shipped into Chicago and then shipped out of Chicago. That
704 is one of the matters we have been trying to establish for sometime. Viewing consequences, etc., were our company in this—that is in connection with adjustments of rates, etc., with Ducommon. That has been a matter of discussion for sometime and it has never been definitely settled or established. We have accepted P. C. W. A. bills as being correct.

Q. The only point I was trying to establish is whether or not this shipment moved on a combination of two rates. $.71 into Chicago and $2.22 as a separately established rate beyond Chicago, or whether it moved on the through-rate of $2.93 from Collegeville to Los Angeles also. Do I make myself clear?

A. You made yourself clear, but I think in this case you'd consider the rate as a through rate carrying the shipment from start to finish. I think you'd consider it from start to finish as a through-rate. I think it would be the only logical thing in this case.

Exam. WAY: At some period in this hearing I would like to have respondent tell us just how these rates are made.

Mr. WHEAT: I am sure that will be done when we get to Los Angeles.

Exam. WAY: I hope so. It is very indefinite now.

Q. (By Mr. AMES) Are these freight bills and bills of lading which make up exhibit number 28 photostatic copies of originals?

A. They are. I have them with me—the original copies.

Q. And the initials "R. L. H." appearing at the
705 bottom of the bill of lading corner, are they yours?

A. No, they are those of an employee in our shipping department.

Q. Now the top document on that exhibit is called an original bill, isn't it?

A. Correct.

Q. Issued to you by the P. C. W. A.?

A. Right.

Q. On that freight bill who is indicated as consignee?

A. Ducommon Metal and Supply Company, Los Angeles, California.

Q. Who is indicated as shipper?

A. Superior Tube Company, Collegeville, Pennsylvania.

Q. Is that your company?

A. That is right.

Q. In paying this bill to the P. C. W. A., you dealt with them, did you not, as one of the agencies transporting your material from Collegeville to Los Angeles? You dealt with them as a transportation agency?

A. That is the thing we are not sure what it is.

Q. But you paid them anyhow, your freight bill?

A. Yes, in order to keep in the good graces of the customer out there, we abided by their instructions and dealt with the P. C. W. A.

Q. And paid them what they asked you to pay for 100 pounds?

A. That is right.

Q. First bill dated October 23, 1946, shows a rate
706 of $2.93, is that correct?

A. That is correct.

Q. Let me ask you first were all these shipments covered by these 20 freight bills of the same commodity?

A. Yes, they are.

Q. Now the bottom bill, Mr. Hunsberger, dated April 16, 1946, shows a rate of $2.76? Are you able to identify that as a transportation rate?

A. That bill of April 16th is based on the rates which were in effect at that time.

Q. Whose rate?

A. Both P. C. W. A. and the Reading Company as a rail carrier.

Q. Reading Company L. C. L. rate you mean?

A. That is right. Around July there was an increase in freight rates. That is what brings the top bill up to the $2.93 rate.

Q. I find another freight bill where you were charged $2.66. What rate is that?

A. I think I have made a correction on my copy of that, if you will just refer to the number I will take it out.

Q. I will, as soon as I locate it.

A. It is the freight bill of May 22, 1946, CLA 1832-29.

Mr. WHEAT: I might say there are two of these we can't identify because the photostat is not legible.

Mr. AMES: Is that one of them?

Mr. WHEAT: May 22, 1946, seems to be legible.

707 Exam. WAY: As to the legibility of that exhibit—a legible exhibit ought to be given Mr. Wheat.

Mr. WHEAT: We don't even have one we can identify as that. What is the CLA?

Mr. AMES: 1832-29.

The WITNESS: I have the original.

Mr. WHEAT: Sorry, these two we have are completely illegible. May I ask, Mr. Examiner, that possibly we could be furnished with legible copies of these?

Exam. WAY: Have you got legible copies you could give Mr. Wheat?

Mr. AMES: After I finish my question I am perfectly willing to let Mr. Wheat have these.

Mr. WHEAT: Thank you, sir.

Mr. AMES: Can you identify that for me, that freight bill is dated May 22, 1946, and the shipment moved on May 1, 1946.

The WITNESS: In verifying this, may I refer to this document? It hasn't been presented formally. But in verifying that, I noticed the irregularity in that rate and I had to correct it. I have made it $2.76.

Q. (By Mr. AMES) It was an error of multiplication?

A. It must have been because the bill is corrected.

Mr. AMES: If you will indulge me a minute, I will figure this out.

The WITNESS: Because they were the actual rates
708 which were in effect at that time. It must be a typographical error on the part of P. C. W. A. because the underneath rate is what we had on the rest of the bill, we have the figure $2.21.

Mr. AMES: Why I think that probably was an error. They got the money from you, they should have, but showed the wrong rate on the freight bill.

Q. (By Mr. AMES) Well now, in any event, the transportation charge, or the rate, or whatever you choose to call it that you paid to get these goods to Los Angeles was $2.93 on the date of this freight bill?

A. That is right.

Q. Now, you had already paid the Reading Company $.17 into Chicago?

A. We did.

Q. So when they billed you for the gross of $2.93, they simply credited the $.71 you had paid?

A. Exactly.

Q. You are not making the point here this shipment moved on the combination of rates—the Reading end of $.71 to Chicago and somebody elses beyond?

A. No, I am not.

Q. This was to get the goods from Collegeville to Los Angeles, and you haven't been able to identify the rate?

A. I have not.

Q. Have you looked into the tariffs?

709 A. We don't calculate our own freight rates or tariff because we consult an audit service that gets the rates. It is a Philadelphia Traffic Audit Service here in town.

Q. Did he check these rates?

A. I may be able to tell you that. Evidently he has not checked this particular batch.

Q. I understood you said one of these rates was the same as L. C. L. carload rate of the railroad from Collegeville to Los Angeles?

A. I am more or less making an assumption on that. As I said before, we have not been able to establish it, due to the fact one is using one rate, and somebody else is using another rate. We have not been able to establish a basis for the ultimate of $2.93 as to whether it is a combination or a single rate.

Mr. AMES: That is all I have.

Mr. WHEAT: Do you have more questions?

Mr. AMES: No.

Q. (By Mr. WHEAT) When you said there had been some discussion about these amounts on these statements you have received from P. C. W. A., did you have in mind with whom you had that discussion?

A. With Ducommon, not with P. C. W. A.

Q. I see, and all your transactions with respect to these matters, have been direct with Ducommon?

A. Right. May I add this? Due to the fact we have to bill on the basing point basis, we run into complica-

710 tions on this set up due to the fact that, for instance, P. C. W. A. sets a rate from Chicago to destination—in this case Los Angeles. Say the basing point for the particular shipment is Detroit. How can we possibly arrive at the P. C. W. A. rate from Detroit to Los Angeles.

inasmuch as they operate only from Chicago. See now, that is the complication.

Mr. AMES: I'll bite, how do you?

The WITNESS: We have been using the established carloading rate such as Universal, National, and such as those, in billing our customer, and they have been kind enough to accept it.

Q. (By Mr. AMES) That is what those rates are then, the rates of the forwarders that you are paying P. C. W. A.?

A. I don't know what they are. When I say we are using carloading rates, I refer to the charge we put on the invoice to Ducommon.

Q. I see. When you charge them, you use the standard carloading rate of companies like Acme and National?

A. That is right. I mean we had to use it in order to get somewhere.

Q. Did you have any basing point trouble as to the tubing shipments exhibited in Exhibit 28? What is your base point on those?

A. Well, all right. For instance, let us take the P. C. W. A. bill CLA 1867-4, that is a shipment of June 27.

Q. Wait a minute now—1867-4—I have it.

711 A. All right. Now, that particular shipment was handled on an f.o.b. Milwaukee basis due to the analysis, or should I say, the type of steel tubing involved—that is, carbon steel tubing. That is one of the basing points for that particular analysis.

Q. And in final settlement with Ducommon, you charged them on the millage basis? You paid the P. C. W. A. $2.76?

A. That is right.

Q. Mr. Ames: I have no more.

Mr. WHEAT: Well what is the through forwarder rate on the Collegeville to Los Angeles, California, on this type of material you mentioned?

The WITNESS: I don't know?

Q. (By Mr. WHEAT) You don't know whether or not it is $2.76, do you?

A. No, I don't. I can't verify it. I tell you, we are not so much interested in that as we are the actual rates from the basing point to destination where that system is involved.

Q. Ordinarily, you are selling f.o.b. Collegeville, are you not?

A. In some cases where there are f.o.b. basing points, it is not f.o.b. Collegeville.

Q. The whole point of the basing point is figuring how much rate you are going to get back from the Ducommon?

A. That is right. Under no circumstances can we recover the entire amount because we charge the customer on the basis of net weight and we stand to lose the
712 difference between gross and net.

Q. When you say P. C. W. A. sets a rate, what you meant, wasn't it, isn't it, is that you received a bill from them at a certain amount?

A. That is right.

Mr. GIVAN: Were the rates shown on that bill?

The WITNESS: Correct.

Q. (By Mr. AMES) Is that shipment from Chicago the only one you used from Collegeville as a basing point?

A. The majority of these are on the basing point basis. Let me go a little further. All right, here is one that is different.

Q. Which one is that now?

A. That is P. C. W. A. bill CLA 1811-11 of May 2, 1946.

Mr. AMES: I have got it.

Mr. WHEAT: That is one of those that we don't have in legible form.

Mr. AMES: Here it is.

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Q. (By Mr. AMES) What did you want to say?

A. Now on that bill of May 6th that we billed f.o.b. Collegeville because of the nature of the transportation involved, and you will notice that we used—you won't
713 notice it—you don't have it—we charged a rate of $2.97 which is over and above the P. C. W. A. and Reading combination. But we used that in order to keep in line with our previously established procedure of using the carloading rate. That is the reason we used $2.97 there, and we are carrying that straight through because it is f.o.b. Collegeville.

Q. (By Mr. WHEAT) Where does the $2.97 appear?

A. It don't appear on your copies at all.

Exam. WAY: Now as far as the freight charges shown on these bills are concerned, that hasn't got anything to do with the settlement that you have with your consignee, has it? And in no instance would the basing rate be shown on these bills? The figures that are shown on the freight bills purport to be the amount of freight which you paid, isn't that true?

A. That is right.

Exam. WAY: And the freight rate is not based on any basing point?

The WITNESS: You mean on these particular bills?

Exam. WAY: I am talking about the freight bills.

The WITNESS: That is right.

Exam. WAY: So when you speak of sales based on basing point that hasn't anything to do with the freight bills?

The WITNESS: No, not as far as that particular rate is concerned.

Exam. WAY: Well then, unless you are going to
714 introduce your invoices here and explain how they are made, why what difference does it make how they are sold?

The WITNESS: When Mr. Rauth called on me, I was advised not to present the invoice for the photostat purposes.

Cross Examination.

Q. (By Mr. TAYLOR) Was there any particular reason for that?

A. No.

Q. Wasn't that just to save expense on photostating on your part?

A. I didn't do the photostating in any event.

Exam. WAY: Then as a general proposition, you have basing points for all these points? That only comes into play with your settlement with the consignee, and it hasn't anything to do with the P. C. W. A.

The WITNESS: It isn't at this time exactly clear. May I ask for a restatement of the question.

Exam. WAY: Read the question.

(The question was read by the reporter.)

The WITNESS: That is right. The basing point part comes into view with the settlement with the consignee only.

Re-cross Examination.

Q. (By Mr. AMES) Now isn't it true with respect to traffic destined to Los Angeles, now just having that in mind, that your basing point rates that you use in lieu of the Collegeville rate, would in most every case, be
715 lower than the Collegeville-Los Angeles rate?

A. That is exactly right.

Q. Now your consignee, the Ducommon Metals Supply Company, apparently makes its settlement with P. C. W. A. on the basis of the Collegeville rate?

A. How would they make a settlement with P. C. W. A. when we pay the bills?

Q. You don't know what their relation is with P.C.W.A.?

A. That is exactly it.

Q. On this bill of lading that you made out and executed jointly with the Reading Company, you show the Pacific Coast Wholesalers' Association as consignee and Chicago, Illinois as the destination?

A. That is right.

Q. You do that in all shipments, don't you?

A. Yes.

Q. When they submit you a freight bill they will show the Ducommon Metals and Supply Company as the consignee?

A. Right.

Q. That is true in all cases?

A. Yes.

Q. (By Mr. WHEAT) Are you meaning to say that on that original instruction, you didn't have a statement for reshipment to Ducommon, did you?

Mr. AMES: That is shown on each one as a reship-
716 ment to be made to Ducommon.

The WITNESS: That is right, every one of them.

Exam. WAY: Anything further?

Mr. TAYLOR: Exhibit Number 28 is offered in evidence.

Exam. WAY: Any objection?

(There was no objection.)

Exam. WAY: The documents marked for identification as Exhibit Number 28 are received in evidence.

(Commission's Exhibit No. 28, Witness Hunsberger, was received in evidence.)

Exam. WAY: Anything further?

Mr. TAYLOR: No further questions.

Exam. WAY: You are excused, sir.

(Witness excused.)

Exam. WAY: Does anybody have anything further?

Mr. WHEAT: Not at this time.

Mr. TAYLOR: That is all we have at this time.

Exam. WAY: If there is nothing further, this hearing will stand adjourned to meet again tomorrow morning at 9:30 a. m., Hotel Cleveland, Cleveland, Ohio.

(Whereupon, at 12:30 p. m., the hearing was adjourned.)

RECORD

446-521

717 Before the Interstate Commerce Commission

Ex Parte Docket No. 160

PACIFIC COAST WHOLESALERS' ASSOCIATION
INVESTIGATION OF STATUS

Parlor 30,
Hotel Cleveland,
Cleveland, Ohio,

Thursday, January 16, 1947.

Met pursuant to adjournment, at 9:30 o'clock a. m.

Before: LEONARD WAY, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

William H. Chamberlain, 2196 Clarkwood Ave., Cleveland, Ohio, appearing for Thompson Products, Inc., intervener.

719 PROCEEDINGS

Exam. WAY: Come to order, please, gentlemen.

This is an adjourned hearing in *Ex Parte* 160, Pacific Coast Wholesalers' Association, investigation of status, before the Interstate Commerce Commission.

Are there any additional appearances?

(No response.)

You may call your first witness, Mr. Taylor.

Mr. TAYLOR: Calling Mr. George W. Kaylor, chief accountant for the Tyson Bearing Corporation, Massillon, Ohio.

Mr. WHEAT: How do you spell that?

Mr. TAYLOR: Tyson, T-y-s-o-n.

GEORGE W. KAYLOR was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Kaylor, as chief accountant for Tyson Bearing Corporation, do you also serve as a traffic manager, or do you handle the duties of a traffic manager?

A. They come under that; yes, sir.

Q. How long have you been so employed?

A. I have been employed at Tyson since '34.

Q. Pardon?

A. Since 1934.

Q. Is your corporation a member of the Pacific Coast Wholesalers' Association?

720 A. No, sir; we are not.

Q. Have you ever been a member of that association?

A. No, sir; we have not.

Q. Does your firm engage the services of Pacific Coast Wholesalers' Association in the transportation of its merchandise to the west coast?

A. Merely upon the recommendation of our customers. They are a public carrier as far as we are concerned.

Q. And these customers are consignees located in the west?

A. That is right.

Q. Of course you probably have no personal knowledge as to whether those customers are members of the Pacific Coast Wholesalers' Association?

A. No, sir; we have no personal knowledge, although we do know that unless we ship for members of the Pacific Coast Wholesalers' Association they will not accept shipments. We have, on several occasions, but they have written us and said they will not accept shipments unless for members in good standing of the association.

Q. How long has your firm been using the facilities of the Pacific Coast Wholesalers' Association?

A. I would say since about '38 or '40.

Mr. TAYLOR: Mark this for identification as Exhibit No. 29.

(The documents referred to were marked as Commission's Exhibit No. 29, Witness Kaylor, for identification.)

721 Exam. WAY: That is composed of how many sheets?

Mr. TAYLOR: Exhibit 29, as marked for identification, is composed of 30 documents, which consist of the photostatic copies of 15 prepaid freight bills of the Pacific Coast Wholesalers' Association, and 15 photostatic copies of the consignors bills of lading.

Exam. WAY: And an abstract of the shipments?

Mr. TAYLOR: Yes, to which is attached a one-sheet mimeographed form which bears a heading "List of Shipments Included in Representative Vouchers for Transportation Paid to P. C. W. A.," and that is headed "Tyson Bearing Corporation—Massillon, Ohio."

Q. (By Mr. TAYLOR) Mr. Kaylor, I will hand you Exhibit No. 29 and will ask you to advise the names of the consignee appearing therein—

Exam. WAY: Well, I don't think you need to do that, if they are on here.

Mr. Taylor: I believe they are all the same.

Mr. Wheat: We will stipulate that they are all members of P. C. W. A.

Q. (By Mr. Taylor) Mr. Kaylor, do all of your shipments transported via the P. C. W. A. move on a prepaid basis?

A. They are moved on a basis of collect to Chicago, prepaid through, if we are to pay the freight, which means that the shipments move into Chicago and are paid
722 there by the P. C. W. A. and then they bill us for the through rate to the west coast.

However, there have been occasions when the originating carrier will bill us for the freight charges. We pay them, and then P. C. W. A. deducts that from their bill when they send it to us.

Q. But in the final accounting, your corporation assumes the freight charges from Massillon, Ohio to the west coast?

A. To the west coast, on shipments on which we designate that we will pay the freight.

Exam. Way: Now, how was that statement? The shipment is billed collect to Chicago?

The Witness: Chicago, yes.

Exam. Way: To Chicago—P. C. W. A. pays the freight charges at Chicago?

The Witness: At Chicago, from Massillon to Chicago.

Exam. Way: How about beyond Chicago?

The Witness: That is where P. C. W. A. picks them up They carry them on to the west coast. Then, if they pay the charge from Massillon to Chicago, they bill us from Chicago to the west coast.

Exam. Way: Then the shipments are not prepaid to Chicago or beyond, are they?

The Witness: They are prepaid to the west coast; that is right.

Exam. Way: All the way through?

723 The Witness: All the way through, but they are sent collect to Chicago; that is the instructions from P. C. W. A. in order to have the bill of lading properly handled.

Exam. Way: So there seems to be a duplicate payment there.

The Witness: No, there is not.

Exam. Way: You say they are prepaid all the way through, and billed collect?

The Witness: Collect to Chicago. The bill of lading is marked "Collect to Chicago, Prepaid through" which

means that the shipment goes into Chicago, P. C. W. A. pays the freight from Massillon to Chicago, but when they bill us, they bill us from Massillon to the west coast, thereby recovering their freight from Massillon to Chicago.

Mr. WHEAT: I think, Mr. Examiner, there is a misunderstanding all the way through here of the use of the word "prepaid." When I send a shipment by express, it is true I can go into the express office and I prepay that shipment, or I can send it collect if they are willing to accept it as such, and the consignee will pay.

In these instances, as I understand the testimony, the shipper might pay prepaid—I might say—to Chicago to a truck line, for example, but I know of no instance where there is a true "prepay" all the way through to, say, Los Angeles.

I think the record should show that there is possibly a misnomer there of the use of the word "prepaid,"
724 probably because transportation people are used to using that term in that way.

Exam. WAY: Well, of course, as I understand the word "prepaid" it is just what it says. You take your shipment to the carrier, and he tells you how much it is, and you pay him the money.

Mr. WHEAT: That was my understanding until I got to talking to these transportation men who use the term in apparently a different sense.

Exam. WAY: Well, apparently there is some different method here. I mean, a different meaning is put to the word "prepaid."

Mr. GIVAN: Mr. Examiner, I think that what the witness refers to is that it is prepaid in the sense that the consignor pays it, but the shipment actually moves before the shipment is paid for.

Exam. WAY: Is that what you mean?

The WITNESS: Yes, sir; that is right.

Exam. WAY: In other words, the shipment is billed to Chicago—in fact, it is billed all the way through, and it is paid or a bill is rendered to you by the Pacific Coast Wholesalers' Association from Los Angeles; is that true?

The WITNESS: Yes, sir.

Exam. WAY: So you don't prepay, in other words; what you do is the shipment goes all the way through and
725 they collect the charges from you. Is that it?

The WITNESS: Well, the word "prepay" is not correct. When we mean "prepay" a shipment, from out standpoint, we mean that we pay the freight on it. When

a shipment is sent out like that from our plant, it means that we pay the freight on it, but not before the shipment moves.

Exam. WAY: So the shipment is sent collect and the bill rendered to you for payment?

Mr. WHEAT: May I suggest, Mr. Examiner, that the sample bill of lading, which is the second page of Exhibit 27, I think shows the true nature of the transaction, because in reading on the right-hand side "If charges are to be prepaid, write or stamp here 'Collect to Chicago, P. C. W. A. to bill shipper'—end quote. That is what I meant by trying to explain this situation. Excuse me for interrupting.

Mr. TAYLOR: May I proceed? I believe that the witness presented his answers clearly from the questions I gave him. In the first instance, he answered affirmatively to my question as to whether the Tyson Bearing Corporation prepaid—either prepaid its shipments through, or in the final analysis assumed the payment of all freight charges from Massillon to point of destination.

The WITNESS: That is right.

Mr. TAYLOR: Now, I believe the witness is also confused by answering affirmatively to the Examiner's ques-
726 tion as to whether the Tyson Bearing Corporation billed its shipments on a collect basis from Massillon.

Q. (By Mr. TAYLOR) Now, handing you Exhibit No. 29, I will ask you, Mr. Kaylor, to again consider your reply to the Examiner's question, and advise whether or not your bills of lading prepared at Massillon show whether the first shipment, for instance, moved on a prepaid basis or a collect basis.

A. This moved on a prepaid basis.

Q. Your bill of lading shows on it "prepaid," does it not?

A. That is right.

Q. And isn't that true of the balance of the shipments contained in the exhibit, or were there some bills of lading in the exhibit which showed that those particular shipments moved on a collect basis?

A. All these moved on a prepaid basis, although they are collect to Chicago. Here is one—there is one the way we are instructed to mark our bills of lading—"collect to Chicago, prepaid thru."

Q. Now, what is the purpose, inasmuch as your corporation assumes the payment of freight charges from Massillon all the way through to the west coast—what is the purpose of your writing in on certain of the bills of lading "collect to Chicago, prepaid from Chicago to the west coast"?

A. That was due to the fact of a misunderstanding some time ago, on the part of the originating carriers.

727 They would pick the shipment up, take it to Chicago, and bill us. Then P. C. W. A. would bill us for the through rate. Therefore, we would pay twice from Massillon to Chicago.

Q. In other words, the accounting method here was occasioned by the fact that there was a different party in transportation concerned, of course, from Massillon to Chicago? For instance, I note that the Summit Fast Freight Company carried some of these packages from Massillon to the Pacific Coast Wholesalers' Association warehouse in Chicago, and in other instances, the Pennsylvania Railroad, and perhaps other carriers, provided that transportation to Chicago.

The question is, was this different method of billing—that is to say, in some instances "prepaid" as you showed on your bills of lading, and in other instances prepayment not shown—occasioned as a result of your arrangement with the originating carrier, which might have been different?

A. With P. C. W. A.

Q. In other words, you prepared your bills of lading in accordance with instructions received from Pacific Coast Wholesalers' Association?

A. That is right.

Mr. TAYLOR: Thank you.

Exam. WAY: Will you go through these bills and tell me, or indicate, on which of these shipments that you actually paid the charges before the shipments moved?

728 The WITNESS: Oh, none of them, sir. On none of the shipments did we pay any charges before they moved.

Exam. WAY: Well, in other words, do you have a credit arrangement so that they render a bill to your company, or what?

The WITNESS: That is right.

Exam. WAY: Well, now, you know what I mean; I am talking about the ones where you actually paid the shipment to the rail carrier, or some other carrier in the east, and paid the charges—strictly in the sense of prepaid.

The WITNESS: No, sir; we have never prepaid any shipments on that basis. The interpretation that you put on prepaid, we make no shipments on that basis.

Exam. WAY: Somebody else try and straighten me out here.

Q. (By Mr. Taylor) Mr. Kaylor, I think I can straighten this out for the Examiner. The only difference—you are being given a running credit by the P. C. W. A.; is that right?

A. That is right.

Q. In other words, they permit you to bill on a prepaid basis, and then when they have an opportunity to prepare the freight bill, they mail you that freight bill, and when you receive that freight bill you put the check in the mail for those charges?

A. That is right; I think you have seven days.

Q. You have some credit with them.

729 A. Doesn't I. C. C. give you seven days on bills—credit?

Q. That credit also applies to the pick-up carriers, does it not?

A. Yes. I think the railroads are the only ones who have a 24-hour or 48-hour basis.

Q. Then the only difference in the basis of your handling and that suggested by Mr. Wheat is that ordinarily when a person makes out a prepaid bill of lading to a carrier, or makes out a prepaid freight bill to an express office, as he has suggested in those instances it is cash on the counter?

A. That is right.

Q. In your method of handling, your bill on a prepaid basis as if you have already paid in the money, but by your credit arrangement with P. C. W. A., you are given the time necessary for them to calculate the freight charges at Chicago and the truck charges for the first part of the haul from Massillon to Chicago, and then upon receipt of that freight bill you pay P. C. W. A. for all of the charges?

A. That is right.

Exam. Way: Well then, my lack of understanding of this is that in my 20 years' experience in railroading, I have always understood when anything was prepaid it was just prepaid, that is all. Now, apparently what happens here is that they intend to ship these goods as prepaid, when as a matter of fact they are billed collect, and when it

730 gets out to the Pacific Coast Wholesalers' Association they render a freight bill, or a bill to the consignor. Now, am I wrong in that?

Mr. Wheat: I do not think that you are.

Mr. Taylor: Well now, these bills of lading contained in the exhibit show plainly on the face of them—and that is all that we are here to show—they do show "prepaid", and that is written in.

Exam. WAY: But the witness says they are not.

Mr. TAYLOR: Mr. Examiner, during the course of my investigations, I have found it to be more or less common practice among manufacturers all over the country, who sell their goods on a prepaid basis, to do the very thing that the Tyson Bearing Corporation has done here, and they don't make actual payment on the rail carriers, sometimes, at the time, but they have the 96-hour credit period to make that payment in and that is the way they do business.

Exam. WAY: Let's ask the witness about it. Take the first freight bill you have here. Describe to us in detail exactly what you did about this shipment.

The WITNESS: This shipment went out of our plant around August the 16th, which is the date of shipment. It went into Chicago by the Pennsylvania Railroad, and it was picked up there by Pacific Coast Wholesalers' Association and delivered on out to this C & L in Los Angeles.

Exam. WAY: Did you pay the money when you
731 made that shipment?

The WITNESS: No, sir; we did not.

Exam. WAY: It was billed collect to Chicago?

The WITNESS: It was billed collect to Chicago, prepaid through.

Mr. AMES: Gentlemen, that is exactly contrary to what his own document shows. I think the witness is confused. Would you like to have me ask him some questions?

Exam. WAY: I'd like to have it straightened out.

Further Direct Examination.

Q. (By Mr. AMES) Would you take in hand your freight bill CSF 1194-1?

A. Yes.

Q. That is a freight bill rendered by Pacific Coast Wholesalers' Association?

A. That is right.

Q. It shows Chanslor & Lyon Company, 740 Polk Street, San Francisco, California, as the consignee?

A. That is right.

Q. And your company as consignor?

A. That is right.

Q. In that freight bill, there is shown a gross rate of $3.31; is that correct?

A. That is right.

Q. And then there is a credit of 80 cents deducted from that?

732 A. That is right.

Q. Leaving a balance of $2.51?

A. Correct.

Q. To that is added 8 cents, under the head of "3%"?

A. That is right.

Q. Making a total of $2.59; is that right?

A. Yes, sir.

Q. And under that is the word "Prepaid", on the Pacific Coast Wholesalers' freight bill?

A. Yes, sir.

Q. There is also on that a notation "Payable within 96 hours, Remit direct to Pacific Coast Wholesalers' Association", giving the address?

A. Yes, sir.

Q. Now, let's go back to the beginning of that shipment, when you tendered it to the Pennsylvania Railroad on August 6, 1946. Did you pay the freight charges into Chicago on that particular shipment—to the Pennsylvania Railroad?

A. We did on that one, sir.

Q. Then you were wrong when you said you didn't pay the charges when you answered the Examiner.

A. I merely stated—if you will recall what I said—that on all the shipments in which we shipped them on this basis, if the originating carrier billed us we paid the bill from Massillon to Chicago, and then deducted that from

733 P. C. W. A. in paying their bill, which is the case in this case.

Q. You mean P. C. W. A. gave you credit for it?

A. All right—either way.

Q. Right. But on that particular shipment, which is the first shipment in your Exhibit 29, you actually paid the freight charges into Chicago. Correct?

A. On which one? The first one?

Q. The first one.

A. CLA 192902?

Q. No. These apparently are not in the same order.

Mr. Wheat: The first one is CSF 1194-1, upon which Mr. Ames is examining you.

The Witness: I am sorry, sir.

Mr. Ames: All those questions were based on 1194-1.

The Witness: That is right. This is the one I have been answering on.

Q. (By Mr. Ames) You answered correctly?

A. I did, sir.

Q. That is the question I want to know; had you paid the Pennsylvania Railroad charges for transportation into Chicago?

A. We did, sir.

Q. Do you have a credit arrangement with the Pennsylvania Railroad?

A. We do. We have a credit arrangement with all carriers.

Mr. AMES: There is the point, Mr. Examiner; I
734 contend that freight charges paid on credit arrangements are just as much cash as though he went down and paid it that morning.

Exam. WAY: There is no question about that feature of it. I am not raising any question about that particular feature; I was trying to determine whether he meant that shipments went—as he has said, some were billed to Chicago and the Pennsylvania billed collect to Chicago, and the Pacific Coast Wholesalers' Association bills him for those charges and he calls it being "prepaid".

Now, all I want to know is just what do they mean by "prepaid"? If they mean it any different than the ordinary, usual parlance in which it is usually used in general transportation service?

Q. (By Mr. AMES) On this particular freight bill, Mr. Kaylor, 1194-1, or any other shipment handled under the same arrangements, so far as the total transportation charges are concerned you really take two bites at it, don't you?

A. That is what happened in this particular shipment.

Q. You paid the charges into Chicago on the Pennsylvania Railroad, and later the P. C. W. A. bills you for the balance?

A. That is right. However, that is not the way we like to do it.

Q. That is the way you did do it?

A. On this shipment; yes, sir.

Exam. WAY: Well now, what other shipments—

735 Q. (By Mr. AMES) Wait a minute, please—there are some others you did the same thing. The second one, CLA 1929-2, did you pay those charges into Chicago?

A. Wait until I find this—yes, sir; we did.

Q. Take the CSF 1157-8.

A. Yes, sir; we paid those on all those that are deducted like that. We paid the payment to Chicago.

Q. On all of these cases where you show a deduction into Chicago, you paid it?

A. We paid the freight on those.

Q. And you paid it on a proper credit arrangement?

A. That is right. Now, here, let me show you this one here, on CLS or CSL 842-2, that shipment was picked up by Summit Fast Freight. We paid no charges into Chicago, but paid the through rate.

Q. Well, in that case the P. C. W. A. freight bill shows a gross amount of $3.18, plus 3 percent, or 10 cents.

A. That is right.

Q. They show no credit into Chicago.

A. That is right.

Q. So that when the freight bill of P. C. W. A. does show a credit into Chicago, it indicates that you paid those transportation charges?

A. That is exactly what I said.

Q. Then, rather, you paid the balance?

736 A. That is what I said.

Exam. WAY: All right. Then if we have any variation from those arrangements, I'd like to be advised of it.

Mr. TAYLOR: Then, Mr. Kaylor, it is true in the final analysis that Tyson Corporation assumes the freight charges on its merchandise from Massillon to the west coast when P. C. W. A. handles that?

The WITNESS: That is right.

Exam. WAY: What is your answer?

The WITNESS: Yes, sir.

Cross Examination.

Q. (By Mr. WHEAT) Mr. Kaylor, when, in answer to a question by Commission's counsel, you responded affirmatively to a question as to whether you "engaged the services of P. C. W. A.", did you not merely mean that you named P. C. W. A. as the consignee in respect to the shipments in question?

A. We had nothing to do with selecting P. C. W. A.

Q. I think you could answer that question yes or no very readily.

A. Well, let me explain it this way. We had nothing to do with selecting P. C. W. A. The consignee suggested that we ship their shipments to P. C. W. A. in Chicago, or the consignee in Chicago would be P. C. W. A., and they would be the delivering carrier. Does that answer your question?

Q. No, sir; it doesn't.

737 Exam. Way: Read the question.

(The question was read.)

A. Yes.

Q. Now, your arrangement—as I understood from your previous answers—is not with P. C. W. A., but is solely with a member of P. C. W. A.; is that correct?

A. That is right.

Q. Then, I take it when you said that you were "using facilities of P. C. W. A.", you meant it in the same sense, to wit, that you named P. C. W. A. as the consignee on these particular shipments at the request or under the direction of some member of P. C. W. A.?

A. That is right.

Q. Thank you. Also, when you answered another question that you did this "on instructions received from P. C. W. A.", did you not really mean that you did it on instructions received from a member of P. C. W. A.?

A. You will have to go back farther than that on that particular question, because we have received instructions from P. C. W. A. on shipments—some shipments.

Q. And what were the nature of these instructions?

A. The nature of those instructions were that we ship P. C. W. A. only shipments that were to be consigned to members of the organization.

Q. Oh, yes; but that was the extent of any instructions you may have received from P. C. W. A.?

738 A. That is right; that is the only instructions we received.

Q. And any other instructions were received by you from members of P. C. W. A.?

A. That is right.

Q. Now, in general, when your company stands the freight on a shipment of the nature of these here in question, are the costs of the freight, or the freight charges added to the bill to your customer eventually?

A. No, sir.

Q. You just stand it?

A. We absorb it.

Q. Presumably, then, those costs to your corporation are somewhere in the overall pricing policy of the company?

A. That is right; yes.

Q. Now, whatever it may be denominated, after you have made the shipment, in instances where it is your policy so to absorb the freight charges, you receive a statement or

bill—as the Examiner questioned you—from P. C. W. A., and you pay P. C. W. A. from that?

A. That is right.

Q. And have you ever made any claim to P. C. W. A. for any reimbursement out of that?

A. No, sir; we have not.

Q. When you said that you "do not like to do this"—I quote—did you mean that you did not like to pay that
739 inbound carrier's rate to Chicago and then have the rest of it billed back to you, and that you would prefer to ship straight through without paying anything in advance yourself?

A. I meant by that that we do not like to pay a freight bill twice.

Q. Yes?

A. In other words, if we can pay charges on a shipment once, it saves bookkeeping and work for our company.

Q. Well, in general, you have found, have you not, that as shown on these sample documents included in Exhibit 29, that when you receive your statement from P. C. W. A. there is included on it—as Mr. Ames brought out—a credit for the amount that you actually had paid to Chicago?

A. That is right.

Q. And whatever you do with respect to these shipments, you do because some member of P. C. W. A. requests that you do it that way?

A. That is right.

Exam. WAY: How, is the consignee indicated on these bills? They are all billed to the Pacific Coast Wholesalers' Association. It is shown; is that Association the consignee?

The WITNESS: They are at Chicago.

Mr. TAYLOR: I believe, Mr. Examiner, you will notice on the face of the bill of lading the ultimate consignee or purchaser.

740 Exam. WAY: I don't see it.

Mr. TAYLOR: I find it on my copy here.

Exam. WAY: All right; I see it.

Q. (By Mr. WHEAT) Mr. Kaylor, in all instances where you show Pacific Coast Wholesalers' Association as consignee on your bill of lading, you also include the notation "for"—some member of P. C. W. A.?

A. That is right: for some member of P. C. W. A.

Q. And that the person or corporation named in that notation is the customer of your corporation?

A. That is right.

Q. And it is also the party from whom you have received your instructions?

A. Yes, sir.

Q. Now, you said that there were some instances where you paid a freight bill twice. Are there any of these that show that you actually did pay twice?

A. I shouldn't say that we paid the freight bill twice—we paid twice on the same shipment.

Q. Oh, I see; that is what you meant?

A. Yes, twice on the shipment.

Q. You took two bites at the cherry rather than being billed once?

A. That is right.

Exam. WAY: In other words, you paid it to Chi-
741 cago, and then you paid it to the Association?

The WITNESS: That is correct.

Q. (By Mr. WHEAT) You mean you paid the Association the difference between the through amount and what you had paid to Chicago?

A. That is right.

Q. Now, there are instances—I note in this exhibit—where you did not pay into Chicago, are there not?

A. That is right; there are instances where we paid Pacific Coast Wholesalers' Association the through rate from Massillon to the co. st.

Q. And that is what you meant when you said—

A. That is the way we like to pay them.

Q. When you talk about a "credit given to P. C. W. A." you didn't mean that there was this running credit we have been talking about from carriers? Not from P. C. W. A.; that was from the originating carrier in all instances?

A. No, it must be from P. C. W. A., because—as the Examiner says, he understands "prepaid" as being paid before the shipment is made, but we understand it as being allowed to make the shipment and then paying for that shipment when the P. C. W. A. bills it.

Q. In other words, what you mean by "prepaid" is that you stand the freight at some time?

A. That is right.

Mr. WHEAT: All right.

742 Re-direct Examination.

Q. (By Mr. AMES:) Now, in answer to Mr. Wheat, Mr. Kaylor, you said that when you used the term you "engaged the service of P. C. W. A." you meant that you were naming them as consignee at Chicago?

A. At Chicago, yes.

Q. And you meant that that was the extent of the service they did for you was consenting to be named as consignee; is that correct?

A. They are the consignee at Chicago.

Q. If that is all they do for you, what did you pay them this money for that is indicated on this freight bill? Doesn't that indicate to you that they rendered this bill to you—doesn't that indicate that they did something for you?

A. Sure.

Q. What did they do for you?

A. Sure—from Chicago to the west coast.

Q. But you said that all they did for you was consent to be consignee at Chicago.

A. You have to have permission to be named as consignee.

Q. Well, your company is not paying out $3.18 a hundred pounds for nothing, are you?

A. No, sir; we are not.

Q. What is the $3.18 rate? Can you identify it?

A. That is a freight charge a hundred pounds be-
743 tween Massillon and the west coast.

Q. Whose charge?

A. I think it is set by the Interstate Commerce Commission, is it not?

Q. I don't know; I am asking you.

A. I don't know either.

Q. You pay the P. C. W. A. $3.18, don't you?

A. That is right.

Q. To get your goods from Massillon to your customer at Los Angeles?

A. Correct.

Q. Now then, they evidently do some service for you, don't they?

A. They do; they carry from Chicago to the west coast.

Further Re-direct Examination.

Q. (By Mr. Givan) Mr. Kaylor, you indicated that on some occasions P. C. W. A. has declined to accept shipments which you tendered to them; is that right?

A. That is right.

Q. What led you to tender such shipments to them?

A. Our billing department could not find any means of transportation to the west coast at that time—everything was clogged up, and P. C. W. A. was very good on deliveries, and they attempted to pass them through on P. C.

W. A. in hopes that they would go through on sched-
744 ule. However, they would not accept them due to the fact that the consignee was not a member of their organization.

Q. Up to the time they so advised you, you had regarded them as a transportation agency which you were free to use at will?

A. That is right.

Q. That impression was derived from your past impressions in dealing with them?

A. Merely from the fact that they were a carrier, and we assumed that anyone could ship on their facilities.

Q. All right, sir; now, have you ever had occasion to file any claims against P. C. W. A. for loss or damage?

A. No, sir; we have not.

Q. One other question; have you ever used the services of any recognized freight forwarder under circumstances where you tendered a shipment to the motor carrier at Massillon for delivery by the motor carrier on into the service of the freight forwarder?

A. Yes, sir.

Q. Have you ever moved such a shipment on a prepaid basis?

A. Yes, sir; we do. We move them on a prepaid basis—meaning prepaid the way that the shipment is delivered and then billed by the delivering carrier.

Q. Well, what would be an example of such a movement?

A. Well, National Carloading delivers some of our goods on the west coast.

745 Q. Now, where do they get it from the motor carrier, if you know?

A. I don't know where they get it from the motor carrier. I think it is Chicago too; I think it is shipped into Chicago, then they pick it up in Chicago, load it in cars, and ship to the west coast.

Q. And then National Carloading bills you back from Chicago, is that correct?

A. They bill us back from Chicago; yes, sir.

Q. Is that transaction entirely comparable to the one which you have been describing this morning?

A. All bills are handled in the same manner; that is right.

Mr. GIVAN: I have no further questions.

Exam. WAY: Is there anything further of this witness?

Re-cross Examination.

Q. (By Mr. Wheat) When you said that you considered P. C. W. A. "a carrier", did you not mean that your entire transactions with P. C. W. A. are the naming of P. C. W. A. as consignee, under instructions from some of your customers who are members of P. C. W. A.?

A. That is right.

Mr. Wheat: Thank you.

Mr. Ames: I'd like to have that question read, and the answer.

(The question and answer was read.)

Mr. Ames: I have some questions on that.

746 Further Re-direct Examination.

Q. (By Mr. Ames) That is your entire transaction with P. C. W. A. when you name them on the bill of lading? Did you mean to say that when you answered that question?

A. When this is consigned, it is P. C. W. A. in Chicago. We give it to them with the understanding that they will deliver that to the Chanslor & Lyon Company in San Francisco, California, and for that service—if you want to call it that—they bill us back on the same basis as if it was delivered there by railroad.

Q. Well, that transaction is depicted in the bill of lading, isn't it, that you are talking about—naming them as consignee?

A. That shows exactly there what it is.

Q. What transaction is this, represented by the freight bill, if this is your entire connection with them? What does this freight bill mean?

A. The freight bill means that they have delivered it to the west coast.

Q. Then you did have some other arrangement with them?

A. No, we did not.

Q. Well, they sent you a freight bill with their name on it and you paid it.

A. That is right, but we also get a freight bill from any other carrier.

747 Q. But you also have relations with other carriers. They perform service, and bill you.

A. And this P. C. W. A. performs service.

Q. And that is shown on the freight bill, isn't it?

A. That is right.

Q. So that you can't say—they sent you a freight bill, and you paid the money?

A. That is for delivering the goods to the west coast?

Mr. AMES: That is right.

Mr. TAYLOR: One more question. Mr. Kaylor, did you know whether or not the rates appearing on the face of these freight bills are freight forwarder rates, or are they rates that are other than freight forwarder rates?

The WITNESS: They are standard rates, the same as is charged by any other deliveries that we make to the west coast.

Exam. WAY: By whom?

The WITNESS: By National Carloading, Universal Carloading & Distributing.

Exam. WAY: You know that by reason of the fact that your office audits these rates?

The WITNESS: That is right.

Mr. WHEAT: And what you mean by your answer, Mr. Kaylor, is that these amounts are equal to the rates charged by these forwarders on similar shipments?

The WITNESS: That is right.

748 Mr. WHEAT: Thank you.

Exam. WAY: You are excused.

(Witness excused.)

Exam. WAY: Call you next witness.

Mr. TAYLOR: I offer in evidence Exhibit 29.

Exam. WAY: Any objection to Exhibit 29?

(No response.)

Exam. WAY: It will be received.

(Commission's Exhibit No. 29, Witness Kaylor, was received in evidence.)

Mr. TAYLOR: Is anyone appearing here as a witness for Weatherhead Company?

FRANK J. NOVAK was sworn and testified as follows:

Direct Examination.

Exam. WAY: What is your name, please?

The WITNESS: Frank J. Novak—N-o-v-a-k.

Q. (By Mr. TAYLOR) Mr. Novak, are you employed by the Weatherhead Company of Cleveland, Ohio?

A. I am.

Q. What is your position with that firm?

A. Traffic Coordinator.

Q. And how long have you been so employed?

A. Since July of last year.

Q. And are you familiar with the shipping prac-

749 tices and the shipping documents of your concern?

A. I am.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. No, sir.

Q. Has it ever been a member?

A. Not that I know of.

Q. Does your concern handle shipping transactions with the Pacific Coast Wholesalers' Association?

A. Through the members of the association we do.

Q. That is from Cleveland to the west coast?

A. Yes.

Mr. TAYLOR: Mark this for identification as an exhibit, please.

(The documents referred to were marked as Commission's Exhibit No. 30, Witness Novak, for identification.)

Mr. TAYLOR: This is a file consisting of 70 photostatic documents, representing 35 freight bills and 35 bills of lading, the freight bills having the printed heading of the Pacific Coast Wholesalers' Association and the bills of lading being executed by the Weatherhead Company, consigned to the Pacific Coast Wholesalers' Association at Chicago, to which exhibit also is attached a statement listing the representative shipments contained in the exhibit and identified on such abstract statement as "List of shipments via P. C. W. A. shipped by Weatherhead Company, Cleveland, Ohio, representative of the handling of numerous other similar shipments consigned to numerous consignees during 1946."

750

Mr. WHEAT: Before you ask any questions, I'd like to ask some.

Exam. WAY: Just a minute; I want to see if all these are legible. The file copy should be legible; mine is not.

Mr. TAYLOR: The second one is the only one, I believe, which did not turn out perfect. That is because the original was not perfect.

Exam. WAY: I am wondering, if it is not legible, if it shouldn't be taken out.

Mr. TAYLOR: Well, it can be identified. I looked it over yesterday and was able to discern the various accounting figures and writing thereon. However, I have no objection to that particular shipment being removed, if it is desired.

Mr. AMES: Is that the second, Mr. Examiner?

Exam. WAY: Yes. Off the record.

(Discussion outside the record.)

Exam. WAY: On the record.

Mr. WHEAT: Before you ask him any questions on the exhibit as a matter of explanation of it, may I ask him a question?

Mr. TAYLOR: Yes.

Mr. WHEAT: Mr. Novak, did you prepare this large
751 document that is the first sheet of Exhibit No. 30 for identification?

The WITNESS: You mean the original?

Mr. WHEAT: Yes.

The WITNESS: Yes, I did.

Mr. WHEAT: And did you yourself—are you the author of the heading on that exhibit?

The WITNESS: No, I am not.

Mr. WHEAT: Who gave you that heading?

The WITNESS: Mr. Rauth, of the Interstate Commerce Commission, sent it in to me.

Mr. WHEAT: Did Mr. Rauth tell you what particular items to put on this sheet?

The WITNESS: Not necessarily.

Mr. WHEAT: Did he?

The WITNESS: No.

Mr. WHEAT: Did you put them on by yourself?

The WITNESS: The individual listings of the companies underneath the heading, I put those on myself.

Mr. WHEAT: You selected, then—are we to understand—each one of the items under the headings across the page?

The WITNESS: Not the headings, no.

Mr. WHEAT: Under the headings, you selected every item that is on there?

The WITNESS: That is right.

Mr. WHEAT: I just wanted to make sure, because
752 you say you got the title from someone else, and then made the selection.

The WITNESS: I had to.

Q. (By Mr. TAYLOR) But, Mr. Novak, considering the listed shipments hereon, it is true is it not that they are representative shipments handled by your concern?

Mr. WHEAT: I suggest, Mr. Examiner, that that is a question that calls for a conclusion of the witness, and probably is not an appropriate question. I'd like to register an objection to it.

Mr. TAYLOR: I am only trying to clarify this document.

Exam. WAY: Let's not have any conversation. The record will show your objection. Proceed.

Q. (By Mr. TAYLOR) Wasn't the purpose, Mr. Novak, of the preparation of this abstract one of condensing the numerous shipments otherwise more specifically identified by the 35 freight bills and 35 bills of lading attached thereto, and wasn't that prepared for purposes of convenience at this hearing?

A. That is right.

Q. Handing you the exhibit marked for identification No. 30, will you please explain the method employed by your office in billing these shipments via the services of Pacific Coast Wholesalers' Association?

A. Well, our bills of lading are consigned to the Pacific Coast Wholesalers' Association at Chicago, showing
753 a carrier from Cleveland—Liberty Highway on No. 1 bill, the items shipped, 14 cartons of pipe fittings, 764 pounds—

Exam. WAY: You don't need to read all that stuff.

A. (Continuing)—consigned on the bottom for delivering carrier to Colyear Motor Sales Company of Los Angeles, on a prepaid basis.

Q. Yes. Now, does your corporation, as a matter of custom, bill all its shipments which are billed through P. C. W. A. on a prepaid basis?

A. That is right.

Q. That is, you prepare your bills of lading, do you not, in Cleveland?

A. Yes.

Q. Whereon you cause the merchandise there to be shipped to the P. C. W. A. at Chicago for further handling by them to your customer located on the west coast?

A. That is right.

Q. And do your bills of lading show on the face "prepaid," or to be prepaid?

A. They do.

Q. And do you make actual prepayment at the time the bills of lading are prepared, or do you await the arrival by mail of the freight bill from Pacific Coast Wholesalers' Association before you make payment on that shipment?

A. We wait until we get the original freight bill
754 from the Pacific Coast Wholesalers before making payment.

Q. Mr. Novak, were you present during the testimony, just—the testimony of Mr. Kaylor, who appeared as a witness just before you were called?

A. On part of that, yes.

Q. Is there any difference between the method of accounting or settlement with P. C. W. A. by your concern with that as stated by Mr. Kaylor?

A. No.

Q. And you usually, then, make your prepayment remittance to P. C. W. A. immediately following the receipt of the freight bill, which you no doubt also know to be in accord-

ance with the 96-hour credit rule of the Commission on its *Ex Parte* 73?

A. That is right.

Q. Upon whose direction do you cause these bills of lading to be prepared to a prepaid basis?

A. More or less on our own direction, I am quite sure, because most of this stuff is on a back order, and anything leaving our plant is on a prepaid basis that is back-ordered.

Q. And is the use of P. C. W. A. facilities also upon your own direction, or are you instructed by somebody to bill—

A. Instructed.

Q. To bill to those facilities?

A. Instructed by P. C. W. A. who the carriers are to ship to—No, I am instructed by the P. C. W. A. who the
755 consignees are that belong to this association. We should ship via P. C. W. A. to only those that belong to the association.

Q. Well, in connection with the shipments identified by the freight bills and bills of lading before you, did you receive instructions from P. C. W. A. itself, or from a member of P. C. W. A., if you know, or was it rather from your customers on the west coast, as to whether or not you should use the P. C. W. A.?

A. More or less from P. C. W. A., who their customers were.

Q. Now, speaking of P. C. W. A., do you mean to say, for instance, that you received a letter of direction from that association to bill these shipments on a prepaid basis, using their facilities at Chicago?

A. No, not a prepaid basis. It states that we should ship to these consignees that are members of their association via P. C. W. A. It doesn't state whether they have to be prepaid or collect.

Q. The only reason then, that you are prepaying your shipments to the consignees shown is for the reason that you, in your sales agreements with those customers, do absorb the freight charges?

A. That is right.

Q. Now, Mr. Novak, has your concern ever had occasion to file any claims for loss of packages with the P. C. W. A.?

A. No, I don't believe we ever had any cause to file a claim.

Q. Have you ever had any damage claims that you
756 have filed with P. C. W. A.

A. To my knowledge, no.

Mr. Taylor: That is all.

Cross Examination.

Q. (By Mr. Wheat) Are all of the shipments shown on that first large page of Exhibit 30 shipments that have moved—showing P. C. W. A. as the consignee—since you became traffic coordinator of the Weatherhead Company?

A. Some are, and some are before I became traffic coordinator with Weatherhead Company.

Q. Well now, were you with Weatherhead Company before you became traffic coordinator?

A. No, I was hired as a traffic coordinator when I took the position.

Q. Since July 1946, when you became traffic coordinator, has the Weatherhead Company received any instructions from the Pacific Coast Wholesalers' Association of any sort?

A. None that I know of, sir.

Q. And any statement you have made in your testimony with respect to any instructions from the Pacific Coast Wholesalers' Association is to be taken, is it, as something you heard from someone else?

A. In regard to what, sir?

Q. In regard to any instructions—we are talking about instructions—from P. C. W. A. of any sort.

757 A. Well, if you are talking about instructions as to who your members are, we have instructions in black and white how to—who to ship to as those members of your association.

Q. I see. And they were received since you became traffic coordinator?

A. No, before I came.

Q. But that is part of your file?

A. That is right.

Q. And you have looked at it?

A. That is right.

Q. I notice you used the expression that you have "received instructions"—more or less—"from P. C. W. A." and I wondered if you could clear up that particular statement?

A. I don't quite get that, sir.

Q. Well, that was a remark you made in connection with a question asked you by Commission's counsel. The fact is, is it not, that your dealings—except for lists of members of P. C. W. A.—are with your customers who are members of that organization?

A. That is right.

Mr. Wheat: That is all.

Re-direct Examination.

Q. (By Mr. AMES) This list you have attached to Exhibit 30, Mr. Novak, is that a list of customers whom you were informed were members of P. C. W. A.?

758 A. That list is a copy of every bill of lading and original freight bill that I have—that you have in your hand.

Q. Did anybody tell you that the Hinshaw Supply Company of San Francisco, the fourth on that list, was a member of P. C. W. A.?

A. That I'd have to get to my file—the P. C. W. A. list that I have in my office.

Q. Do you know whether the Idaho Falls Battery Company of Idaho Falls is a member of the P. C. W. A.?

A. Offhand, I don't recollect.

Q. Do you know whether the Shaw Auto Parts Company of Pocatello, Idaho is a member of the P. C. W. A.?

A. That I'd have to get to that file. I wasn't requested to bring that.

Q. Did you ship to these particular customers on the understanding that they were P. C. W. A. members?

A. They must have been, or I wouldn't have had it shipped that way. You wouldn't have copies of your bills of lading or Pacific Coast Wholesalers' Association freight bills covering those shipments.

Mr. AMES: I assume, Mr. Examiner, that we will have in evidence eventually in this case—we do not now—a list of P. C. W. A. members?

Exam. WAY: In order that I don't forget it, I will request Mr. Wheat to supply us with a list of the members of P. C. W. A.

Mr. WHEAT: We will be glad to.

Exam. WAY: Thank you.

759 (The document described to be furnished by respondent.)

Q. (By Mr. AMES) All right. Are you familiar with the routing of freight shipments, generally speaking?

A. Yes, sir.

Q. Is it your custom, if you are indicating the identity of the carriers you wish to handle your shipment, to show that in the bills of lading when you want a particular route to be observed?

A. You mean the delivering carrier from here to Chicago?

Q. No; under the heading of "route" in the bill of lading, you have "consigned to", "destination", and

"route". Under that third term "route", isn't it your custom as a traffic man to indicate in that line the particular carriers you want to have handle your shipment?

A. The particular carrier handling our shipment to the transfer of the shipment to some other line, yes.

Q. And if there are two carriers whom you have selected to haul your traffic, you generally indicate both of them?

A. That is right.

Q. The first carrier, and then care of somebody else?

A. That is right.

Q. Now, in these bills of lading under that term "route" you show in the first one, for example, "L. H., care of
760 P. C. W. A". Is that the ordinary step you take when you want to indicate what carriers are to handle your shipment?

A. That is right.

Q. And in this case it was Liberty Highway to Chicago and the P. C. W. A. was to carry from there on?

A. That is right.

Q. Now, that is true, in fact, on all these examples that you have shown—the P. C. W. A. under that routing instruction line?

A. Yes, sir.

Q. In addition to the fact that you show them as consignee in Chicago?

A. Yes, sir.

Q. Now, on their freight bills to you, they have indicated your customer as the consignee, have they not?

A. Yes, sir.

Q. In all cases?

A. Yes, sir.

Mr. AMES: This will take only a few moments, Mr. Examiner, while I have the witness on the stand.

Exam. WAY: All right, sir.

Q. (By Mr. AMES) I now hand you a paid freight bill issued by the P. C. W. A., 1174-2, and a bill of lading accompanying that shipment, or covering the shipment. Please indicate for the record who is the consignee named in that bill of lading under the heading "Consigned to".

761 A. According to the bill, consigned to the Hinshaw Supply Company at San Francisco, California.

Q. And that particular shipment was not consigned to the P. C. W. A. at Chicago, was it?

A. No, sir.

Q. But they were indicated in the "Route" column as a carrier?

A. That is right.

Q. I now hand you freight bill of the Pacific Coast Wholesalers' Association, included in your Exhibit numbered 934-1. Do you identify that?

A. Yes, sir.

Q. And that is a photostat of your original record, I take it?

A. It is.

Q. That shipment was consigned to the Pacific Coast Wholesalers' Association at Chicago?

A. Yes, sir.

Q. And indicated in the bottom of the bill of lading is the expression "Submark for: Idaho Falls Battery Co., 220 C St., Idaho Falls, Idaho?

A. Right.

Q. And in the route column, you show P. C. W. A.?

A. I think you will find Liberty Highway carriers to Chicago, right here, sir.

Q. That is right. I now hand you paid freight bill, Pacific Coast Wholesalers' Association number
762 970-4, introduced as a part of your Exhibit No. 30. I will ask you whether that particular shipment was consigned to the Pacific Coast Wholesalers' Association at Chicago?

A. It was.

Q. And the body of the bill of lading there is indicated "Shaw Auto Parts Company, Pocatello, Idaho"?

A. It is; via New York Central to Chicago.

Q. That shipment moved by New York Central to Chicago?

A. That is right.

Q. Now, in that case, did your company pay the freight charges into Chicago?

A. On that case we may have paid it and it returned by the P. C. W. A.

Q. They would have allowed credit on the P. C. W. A. bill?

A. That is right.

Mr. Ames: That is all.

Exam. Way: We will have a recess for five minutes.

Mr. Wheat: I have one or two questions.

Exam. Way: All right.

Re-cross Examination:

Q. (By Mr. WHEAT) In these items that Mr. Ames has been questioning you about, who instructed you to ship in the manner you did? Some member of P. C. W. A.?

A. Either that, sir, or as I stated before, we have that letter list from the P. C. W. A in two sheets, I be-
763 lieve, quoting their members of the Association.

Q. I believe that letter said that you were authorized to ship in that manner to members or for the account of members, did it not?

A. That is right.

Q. And then you followed those instructions in shipping to customers of members, did you, in these instances?

A. To the best of my knowledge, yes.

Mr. WHEAT: Thank you.

Mr. AMES: Mr. Examiner, might we have that letter in evidence if this witness is willing to supply it within ten days? I am interested in this account of members. I am interested in how far that can go.

Exam. WAY: You will supply it for the record, with copy to Mr. Ames, and do it within ten days, and also copy to Mr. Wheat.

Mr. AMES: The letter containing the instructions upon which you felt authorized to make these shipments. You have the letter in your file?

The WITNESS: Yes, sir.

Exam. WAY: You don't happen to have the letter with you now?

The WITNESS: No, I don't.

Exam. WAY: Are you located here?

The WITNESS: In Cleveland, yes, sir.

764 Exam. WAY: Could you bring that letter to the hearing room before it closes and have it read into the record?

The WITNESS: I could bring it here tomorrow if necessary.

Exam. WAY: We won't be here tomorrow. All right: mail it in then.

(The document described to be furnished by Witness Novak.)

Q. (By Mr. WHEAT) In any event, Mr. Novak, are we to understand that shipments of this nature were shipped—as you have just testified—on the instructions of some member of P. C. W. A.?

A. Some member—I believe it is more or less from the P. C. W. A. traffic department themselves.

Q. What is this?

A. From the P. C. W. A. traffic department itself.

Q. You are referring only to this letter?

A. That is right.

Q. But when you ship to anyone not listed there as a member, was that done because you had received instructions from some member to do so?

A. I may have received instructions from some one, or else it was placed on the order when it was received through our sales department.

Q. That would be instructions, wouldn't it?

A. Yes, sir.

765 Q. In other words, unless you had received such instructions, such a matter would be purely a mistake?

A. It should be.

Exam. WAY: Any other questions?

Mr. WHEAT: No, sir.

Exam. WAY: I have just one. You were asked about the prepayment of these charges, and said that you absorb the freight charges. What do you mean by absorbing the freight charges?

The WITNESS: We pay the freight charges on our own shipments. We don't charge the customers.

Exam. WAY: You don't charge it back? It is not included in the invoice?

The WITNESS: No, sir.

Exam. WAY: All right. Any more questions?

Mr. WHEAT: You must include that in the cost, or price of goods sold?

The WITNESS: It is.

Mr. AMES: I'd like to record an objection in the record to Mr. Wheat's last question, on the grounds of immateriality, and on the grounds of the Darnell-Taenzer decision.

Exam. WAY: It will be noted. You are excused.

(Witness excused.)

Exam. WAY: We will have a short recess at this time.

(Short recess.)

Exam. WAY: Come to order.

766 Mr. TAYLOR: Calling Mr. L. C. Schmetzer.

Mr. CHAMBERLAIN: Mr. Examiner, my name is William H. Chamberlain, counsel for Thompson Products, Inc., and some years ago I did practice before the Commission, representing the Akron-Canton-Youngstown Railroad Company. I'd like to enter an appearance solely for the purpose of protecting this witness.

Exam. WAY: Do you want to interview this witness?

Mr. CHAMBERLAIN: I don't know yet.

Exam. WAY: All right. Fill out an appearance blank, please, as an intervener. Show him as an intervener.

L. C. SCHMETZER was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Schmetzer, are you employed by the Thompson Products, Inc., of Cleveland, Ohio?

A. Yes, sir.

Q. And what is your position with that firm?

A. General Traffic Manager.

Q. And how long have you been so employed?

A. A little over seven years.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. No, sir.

Q. Has it ever been a member?

767 A. No, sir.

Q. Do you use the facilities of the Pacific Coast Wholesalers' Association for the transportation of your merchandise?

A. By request.

Q. By request of whom?

A. Of customer accounts.

Q. Customer accounts on the west coast?

A. Yes, sir.

Mr. TAYLOR: Mark this for identification as Exhibit No. 31, which contains photostatic copies of 21 bills of lading in the printed form of Thompson Products, Inc., Cleveland, Ohio; 21 freight bills with the heading "Pacific Coast Wholesalers' Association"; three vouchers and three checks, and one recapitulation statement listing shipments included by evidence of voucher No. 3-238.

Exam. WAY: Has the reporter a copy? It will be so identified.

(The documents referred to were marked as Commission's Exhibit No. 31, Witness Schmetzer, for identification.)

Q. (By Mr. TAYLOR) Handing you Exhibit No. 31, Mr. Schmetzer, will you please relate briefly the method of transacting your business via P. C. W. A., with respect to those shipments contained therein?

768 A. Shipments as forwarded by Thompson Products via the Pacific Coast Wholesalers is at the request of our customer accounts. They are forwarded

into Chicago in care of Pacific Coast Wholesalers, then I presume a consolidation to the customer accounts who are members of the Association.

Q. Will you please explain, with reference to the freight bill appearing on the top shipment, how the prepayment of that bill was effected? That is to say, was that particular shipment, for instance, forwarded under prepaid basis upon instructions from the customer, which it appears was Motor Mercantile Company, Salt Lake City, Utah, or was it forwarded on instructions from the Pacific Coast Wholesalers' Association?

Exam. WAY: Now, you are referring to CSL 807-1?

The WITNESS: CSL?

Exam. WAY: 807-1—I am merely asking you to identify the bill that you are talking about.

The WITNESS: That is the—14 cartons, that is the one?

Mr. WHEAT: Mr. Examiner, did the witness answer the question?

Exam. WAY: No, we are trying to identify the document here. Off the record.

(Discussion outside the record.)

Exam. WAY: On the record.

Q. (By Mr. TAYLOR) Referring to a shipment identified on Pacific Coast Wholesalers' Association freight bill dated January 28, 1946, Ref. No. CSL 773-17—

769 Exam. WAY: January 28th?

Mr. TAYLOR: Yes, January 28th.

Q. (By Mr. TAYLOR) —which covers the freight charges on ten packages weighing 579 pounds; the freight charges are shown to be prepaid, $19.80. The question is: Did Motor Mercantile Company at Salt Lake instruct you to bill that shipment via P. C. W. A. services and on a prepaid basis?

A. Their instructions—the account's instructions were to forward via that service. However, our material or products are sold on that basis—F. O. B. delivered.

Q. Do you know whether or not the consignee there, Motor Mercantile Company, is a member of P. C. W. A.?

A. I presume they are.

Q. You presume, but you don't know?

A. Not definitely, no.

Q. Did you also have occasion to make, during the year 1946, other similar prepaid shipments to that customer located in Salt Lake City?

A. Yes, sir.

Q. A great number of shipments would you say?

A. Well, not a great number, but frequent shipments?

Q. The file also contains shipments to Strevell-Paterson Hardware Company in Salt Lake City, Utah, which were similarly handled on a prepaid basis. Would your answer also be the same with respect to that concern? You
770 do not know whether or not they are a member of P. C. W. A.?

A. That is right.

Q. Has your concern at any time filed claims for loss or damage to Pacific Coast Wholesalers' Association?

A. I would readily believe so. However, I don't know of any definite claim yet.

Mr. Wheat: I ask that the answer be stricken if the witness does not know.

Exam. Way: Yes. Your answer is that you don't know?

The Witness: To my knowledge, I don't know that they have filed claims against that company.

Q. (By Mr. Taylor) And you did tell me, did you not, earlier in the testimony, that your concern is not a member of the Pacific Coast Wholesalers' Association?

A. They are not.

Mr. Taylor: I believe that is all.

Mr. Wheat: I have a question or two.

Cross Examination.

Q. (By Mr. Wheat) Mr. Schmetzer, in connection with any of these shipments shown on Exhibit 31, are we to understand that in each instance you attempted to follow the instructions of your customer?

A. That is correct.

Q. And the sub-consignees, named after you named P. C. W. A. as the main consignee, are the ones from
771 whom you obtained those instructions? They are your customer, are they not, from whom you obtained these instructions?

A. That is right. They are our customer—that is, they are a distributor customer.

Q. Well, in other words, Pacific Coast Wholesalers' Association as such didn't instruct you to do anything, did it?

A. No, sir.

Q. Your only connection with them is that you paid these statements as they came in, is that correct?

A. That is correct.

Mr. Wheat: Thank you; that is all.

Re-direct Examination.

Q. (By Mr. AMES) Have you ever had any correspondence at all with the Pacific Coast Wholesalers on their letterhead?

A. Not to my knowledge.

Q. Mr. Schmetzer, I show you a bill of lading which is accompanied by freight bill CSL 807-1, which is a part of Exhibit 31 in this proceeding. That bill of lading contains two sub-consignees' names, does it not?

A. That is correct.

Q. Now, which one of those gave you the instructions as to how to ship?

A. Motor Mercantile.

Q. How did Strevell Paterson enter into it?

A. They are probably an account of the Motor Mercantile Company.

772 Q. Might it be the other way around?

A. I don't believe so.

Q. You think that Motor Mercantile is the prime consignee and Strevell is his account?

A. They are our customer.

Q. Both?

A. Motor Mercantile.

Q. Is your customer?

A. That is right.

Q. I understood you to say you are general traffic manager?

A. That is correct.

Q. When you want to indicate to the transportation agencies that are to handle any of your traffic a particular carrier whom you would like to patronize, how do you do it in the bill of lading? Where do you do it?

A. In the column provided, generally, for that purpose.

Q. And that is the line after the "Route" that appears in the Uniform Bill of Lading?

A. Yes, sir.

Q. Isn't it true that after the word "Route" in all these bills of lading, you have inserted "Pacific Coast Wholesalers' Association"?

A. From appearances, yes.

Q. Now, from your experience as a traffic manager, Mr. Schmetzer, wouldn't that indicate to you that they

773 were named there as the transportation agency to handle your shipment?

A. By customer's request.

Q. Well, I know, but I am not speaking of the customer's request. But in the ordinary practice of routing and billing traffic, wouldn't that indicate to you as a traffic man that that bill of lading called for a transportation agency known as the Pacific Coast Wholesalers' Association to handle that shipment?

A. That is true.

Mr. AMES: That is all I have.

Re-cross Examination.

Q. (By Mr. WHEAT) Now, is it a fact that all you meant by your last answer is that you would anticipate that when this shipment reached Chicago, the Pacific Coast Wholesalers' Association or its agents would consolidate this shipment with other shipments and forward in through cars to west coast points, or do you know anything about it?

A. I am sorry, but I don't know anything of their operation, other than the fact that we are requested to ship them that way.

Mr. WHEAT: Thank you, that is all.

Exam. WAY. Is there anything further? You are excused.

(Witness excused.)

Mr. TAYLOR: The Exhibits identified by No. 30 and 31 are offered in evidence.

774 Exam. WAY: They are received.

(Commission's Exhibits No. 30, Witness Novak, and No. 31, Witness Schmetzer, were received in evidence.)

Mr. TAYLOR: Calling Frederick C. Wills.

FREDERICK C. WILLS was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) You are Mr. Frederick C. Wills of the Almetal Universal Joint Company, Cleveland, Ohio?

A. That is right.

Q. And what is your position with that corporation?

A. I am secretary of the company.

Q. How long have you been secretary?

A. About four years.

Q. And as secretary, are you familiar with the traffic transactions of your corporation?

A. Yes, sir.

Q. Is your corporation a member of the Pacific Coast Wholesalers' Association?

A. No, sir.

Q. Has it ever been a member?

A. No, sir.

Q. Does it use the facilities of the Pacific Coast Wholesalers' Association?

775 A. Yes, sir.

Q. In what way?

A. To ship to our customers on the west coast.

Mr. TAYLOR: Mark this for identification as Exhibit No. 32, which is an exhibit containing 35 photostatic documents, consisting of, one: bills of lading prepared on the printed form of the Almetal Universal Joint Company, Cleveland, Ohio, year 1946, and two: copies of original freight bill by Pacific Coast Wholesalers' Association, and three: debit memos from Lambert Company, Ltd., Los Angeles, to Almetal Joint Company, claiming credit—

Exam. WAY: You don't need to go further. It will speak for itself. It will be marked No. 32.

(The documents referred to were marked as Commission's Exhibit No. 32, Witness Wills, for identification.)

Q. (By Mr. TAYLOR) Mr. Wills, handing you Exhibit No. 32, I will ask you to advise whether or not the freight bills prepared by P. C. W. A. are shown to be on a collect or a prepaid basis?

A. On a collect.

Q. And what do those charges consist of—that is, for what transportation? Are they from Cleveland to the points on the west coast designated?

A. Cleveland through.

Q. And by what services of transportation from

776 Cleveland to Chicago do those freight bills represent?

A. I think most of them go along Liberty Highway Truck Lines to Chicago.

Q. Motor truck lines to Chicago?

A. As a rule, yes.

Q. And deliveries are made to a warehouse at Chicago, the location of the Pacific Coast Wholesalers' Association?

A. That is right.

Q. Now, you say that the shipments moved on a collect basis. Thereafter, did the consignee, Lambert Company bill your concern for the amount of freight charges shown on the freight bills contained in this exhibit?

A. That is right.

Q. Then, in all instances, in the final accounting, your corporation assumed the cost of transporting the merchandise identified in these freight bills from your location in

Cleveland to the final destination, which in most instances there I believe is Los Angeles?

A. That is right.

Q. Did your corporation at any time have occasion to file claims with Pacific Coast Wholesalers' Association for loss or damage?

A. No, sir.

Mr. TAYLOR: That is all.

Mr. WHEAT: Just one question, please.

777 Cross Examination.

Q. (By Mr. WHEAT) I take it from the fact that you assumed these freight charges after these customers had come back at you for them, that your prices include freight; is that right?

A. That is our regular price.

Mr. AMES: I object to that question on the same grounds as previously given.

Exam. WAY: The objection is noted.

Q. (By Mr. WHEAT) Now, when you said that you use the facilities of P. C. W. A. to ship to your customer on the west coast, I take it that you meant that you consigned to P. C. W. A. under instructions from those customers on the west coast?

A. From our customers on the west coast.

Q. You have never been advised or instructed or requested to do that by P. C. W. A. as such, have you?

A. No, sir.

Q. And all of your arrangements with respect to the price and the freight and all these things you have been talking about this morning are entirely between you and your customers; is that true?

A. Yes, sir.

Q. And where that customer is a member of P. C. W. A. and requested you to do so, you named P. C. W. A.?

A. That is right.

Mr. WHEAT: I think that is all.

778 Mr. AMES: I have nothing.

Exam. WAY: Any other questions? You are excused.

(Witness excused.)

Mr. TAYLOR: Offered in evidence is Exhibit No. 32.

Exam. WAY: It will be received.

(Commission's Exhibit No. 32, Witness Wills, was received in evidence.)

Exam. WAY: Does anyone else have anything to offer at this time?

Mr. TAYLOR: That is all for us, Mr. Examiner.

Exam. WAY: Then the hearing will stand adjourned, to meet at Chicago, at the Sherman House, at 9:30 tomorrow morning, January 17, 1947.

(Whereupon, at 11:35 a. m., an adjournment was taken until 9:30 a. m., Friday, January 17, 1947.)

779 Before the Interstate Commerce Commission

Ex Parte DOCKET No. 160

In the Matter of

PACIFIC COAST WHOLESALERS' ASSOCIATION

—INVESTIGATION OF STATUS—

Room 118, Hotel Sherman,
Chicago, Illinois,

Friday, January 17, 1947.

Met pursuant to adjournment, at 9:30 a. m.

BEFORE: LEONARD WAY, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCES:

Paul J. Maguire, 39 South LaSalle Street, Chicago, Illinois, appearing for Cloverleaf Freight Lines, Inc., Interstate Dispatch, Inc., and Middle States Motor Freight, Intervenors.

Earl Girard, 10 North Clark Street, Chicago, Illinois, appearing for Chicago-Milwaukee Motor Carriers Conference and Chicago-Suburban Motor Carriers Association, Intervenors.

781 PROCEEDINGS

Exam. WAY: Come to order, please.

The Interstate Commerce Commission has set for further hearing before me at this time and place *Ex Parte* number 160, Pacific Coast Wholesalers' Association status.

Are there any additional appearances?

Mr. MAGUIRE: Paul J. Maguire, 39 South LaSalle Street, Chicago, Illinois, appearing for the Cloverleaf Freight Lines, Incorporated, Interstate Dispatch, Incorporated, and Middle States Motor Freight. I am an attorney and have been admitted to practice before the Commission.

Exam. WAY: You are asking to intervene in this proceeding?

Mr. MAGUIRE: That is correct.

Exam. WAY: And what is your interest in it?

Mr. MAGUIRE: Our interest is to the effect that respondent in these proceedings is a freight forwarder.

Exam. WAY: And you will be permitted to intervene only in so far as your evidence relates to the practices of this respondent.

Mr. MAGUIRE: I understand.

Exam. WAY: Are there any other appearances?

Mr. GIRARD: Earl Girard, 10 North Clark Street, Chicago, Illinois—

Mr. WHEAT: I didn't get that name, sir.

782 Mr. GIRARD: Earl Girard, G-i-r-a-r-d, appearing on behalf of the Chicago-Milwaukee Motor Carrier Conference and Chicago Suburban Motor Carriers Association, as intervenor as to those matters that concern transportation of traffic by our motor carrier members to the Pacific Coast Wholesalers' Association.

Exam. WAY: Any others?

(No response.)

You may proceed.

Mr. TAYLOR: I will call Mr. Herbert C. Schmidt.

HERBERT C. SCHMIDT, was sworn and testified as follows.

Direct Examination.

Q. (By Mr. TAYLOR) What is your name?

A. Herbert C. Schmidt.

Q. Mr. Schmidt, are you employed by the Blackhawk Manufacturing Company of Milwaukee, Wisconsin?

A. Yes, sir.

Q. What position do you hold?

A. Traffic Manager.

Q. How long have you held that position?

A. Twenty-seven years.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. No, sir.

783 Q. Has it ever been?

A. No, sir.

Exam. WAY: Are you appearing here under a subpoena?

The WITNESS: Yes, sir.

Q. (By Mr. TAYLOR) Does your firm ship any of its merchandise through the facilities of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. What is the nature of your merchandise and what is the method of handling the transportation thereof?

A. We ship hydraulic jacks, wheeled and not wheeled, also wrenches with and without attachments.

Q. To customers located in what principal points?

A. Los Angeles, Salt Lake City, Utah, Portland, Oregon, Spokane, Washington, and San Francisco, California.

Exam. WAY: Where did those shipments originate?

The WITNESS: At Milwaukee, Wisconsin.

Q. (By Mr. TAYLOR) And what method of transportation do you use from Milwaukee to the points of P. C. W. A. consolidation at Chicago?

A. Cushman Motors and Transamerican Freight Lines.

Q. Was the use of such facilities contracted for by yourself or through P. C. W. A.?

A. Through P. C. W. A. They specified that.

Exam. WAY: You mean the consignor specified the routing?

784 The WITNESS: The consignee.

Exam. WAY: The consignee?

The WITNESS: Specified the routing.

Q. (By Mr. TAYLOR) And that consignee, in each instance, is a member of the Pacific Coast Wholesalers' Association?

A. That is what I understand, yes.

Q. Do you receive those instructions direct from the consignee or from the membership office in Los Angeles?

A. Direct from the consignee.

Mr. TAYLOR: Thank you. Please mark for identification as Commission's Exhibit number—

Exam. WAY: 33.

Mr. TAYLOR: (Continuing)—33, consisting of thirty-three photostatic documents, which are identified as shipping orders, purchase orders, bills of lading and, in addition thereto, individual letters of instructions from purchasers of the merchandise shipped, identified as Ballou & Wright, Portland, Oregon, The Salt Lake Hardware Co., Salt Lake City, J. E. Haseltine & Co., Portland, Oregon, Ducommun Metals & Supply Company, Los Angeles.

Off the record?

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Mr. TAYLOR: (Continuing) And, in addition to and
785 as a part of said Exhibit Number 33, a recapitulation sheet in photostatic copy, entitled, "Sheet Number 1," which shows at the top thereof, "Exhibit 'C', Blackhawk Manufacturing Company".

(The documents referred to were marked as Commission's Exhibit No. 33, Witness Schmidt, for identification.)

Mr. WHEAT: May I ask, where you are identifying that, what do you mean by the heading "List of Documents which will be brought to the Chicago Heating by Witness P. J. Spielmann, Assistant Treasurer, for introduction in the record"?

Mr. TAYLOR: Well, Mr. Wheat, as I understand it, the person appearing for each of the shipper corporations were instructed to bring the original documents with them in case you, or some one else present here, might protest to the introduction of these photostatic copies. I assume that at first it was intended that P. J. Spielmann, assistant treasurer for this corporation, would appear with such documents.

Mr. WHEAT: I see.

Q. (By Mr. TAYLOR) Mr. Schmidt, handing you the exhibits contained in number 33—

Mr. WHEAT: (Interposing) Are these a part, then, of Exhibit 33 (indicating)?

Mr. TAYLOR: Yes.

Mr. WHEAT: Mr. Reporter, I was referring in that question to two other printed documents which were
786 handed to us along with them.

Mr. TAYLOR: I will also include those in the identification of Exhibit No. 33, and they are identified as, number 1, "Distributors' Confidential Price Schedule No. 896, Blackhawk wrenches, issued November 13, 1945."

Mr. Examiner, I don't know whether it is proper for us to include these in this exhibit. That kind of a title would lead me to believe—

Exam. WAY: (Interposing) I don't see that it would serve any purpose whatsoever.

Mr. TAYLOR: I suggest that we, at this time, remove from the exhibit the two sheets.

Mr. GIRARD: Mr. Examiner, not given the benefit of having the exhibit, does the document purport to show the basis on which the shipper sells his product, that is, f.o.b. origin or f.o.b. destination?

Exam. WAY: That has been developed in this case and is being developed as we go along in each case.

Mr. GIRARD: Does that particular document purport to, show that?

Exam. WAY: It does not.

Mr. GIRARD: I would like, at some time through this proceeding, to have a copy of the particular exhibits.

Exam. WAY: You can't get them because we haven't got them.

Mr. GIRARD: Do I understand that we are not en-
787 titled to receive a copy of the evidence that is being introduced?

Exam. WAY: Appearing as an intervenor in this case we can't furnish you with the exhibits beyond the number that has been brought to the hearing.

Mr. GIRARD: That is in the record, I assume?

Exam. WAY: That is right, that is in the record. Of course, the record is public and you may look it over.

You have withdrawn the two sheets referred to by Mr. Wheat?

Mr. TAYLOR: I still have two outstanding copies, I believe.

The confidential price schedules of Blackhawk Manufacturing Company are at this time being removed from Exhibit Number 33.

Exam. WAY: Well, you are not referring to two loose sheets?

Mr. TAYLOR: Two loose sheets, one identified as, "Price Schedule No. 896," contained in each exhibit and the other list being identified as, "Jobbers' Confidential Price List J. C.—43—issued February 1, 1943."

Exam. WAY: All right, proceed.

Q. (By Mr. TAYLOR) Mr. Schmidt, handing you photostatic copies contained in Exhibit 33, heretofore identified, I will ask you to please relate briefly the method employed by your concern in handling shipments to P. C. W. A., taking the first shipment in the group and following it through in explanation.

Mr. WHEAT: Would you mind specifying the number, too, so we will know which documents you are referring to, Mr. Schmidt?

788 The WITNESS: Are they numbered?

Mr. WHEAT: Well, there is a number on it.

Q. (By Mr. TAYLOR) Yes, Mr. Schmidt, take up lease, sir, for instance the first document of your file, if it happens to be a shipping order or a purchase order, and follow the identification of that order through to the issuance by your firm of the bill of lading and the receipt later of the freight bill from P. C. W. A.

A. Shipment made May 9, 1946,—

Exam. WAY: What is the number of it, please?

The WITNESS: The shipping order is V48280, shipment made May 9, 1946, to Ballou & Wright, Portland, Oregon, bill of lading number V1311, consisting of four jacks wheeled, 780 pounds,—

Mr. WHEAT: (Interposing) Just a second until we can find it.

Exam. WAY: You are now reading from the bill of lading?

The WITNESS: That is right.

Mr. WHEAT: May we have just a moment to locate it, please?

The WITNESS: Surely.

Q. (By Mr. TAYLOR) And the bill of lading reads, in addition to that which you have just stated, what consignee, what destination and by what truck routing, if by truck routing?

A. This shipment is routed Transamerican, consigned to Ballou & Wright, Portland, Oregon, through P. C. W. A. at Chicago, Illinois.

789 Q. That is to say, the truck movement was from?

A. Milwaukee to Chicago.

Q. And for consolidation in handling thereafter by P. C. W. A. to the Pacific Coast?

A. That is right.

Mr. WHEAT: May I ask, Mr. Taylor, whether the witness read that correctly? Is it not consigned to P. C. W. A., Chicago, Illinois? And isn't Ballou & Wright, Portland, Oregon, put on there as a memorandum as the ultimate receiver of the freight?

The WITNESS: That is right, sir.

Q. (By Mr. TAYLOR) Go on next to the freight bill, Mr. Schmidt, covering that particular shipment, please?

A. The freight bill? We don't have the freight bill. We don't get a freight bill only on prepaid shipments.

Q. Am I to understand, then, that this, and other shipments contained in this exhibit, did not move on a prepaid basis?

A. That is correct.

Q. Did your concern in any way absorb the freight charges in connection with this and other shipments?

A. We allow freight on all shipments over 100 pounds tariff rates.

Q. And by what method does your concern allow such freight?

A. We allow them freight on the invoice.

Q. And do you have with you in your file the invoice covering this particular shipment identified?

790 A. The shipping order is an exact copy of the invoice.

Q. Well, what document do you have here which shows the allowance of freight charges in your settlement transaction with the customer?

A. I have a copy of the bill of lading showing the allowance of $26.13, which is also shown on invoice V48280.

Q. And how are you advised as to the final freight charges paid at destination—by the amount contained in the margin of the bill of lading?

A. That is right.

Q. And was that ascertained at the time you prepared the bill of lading?

A. Yes. That rate is entered right after the shipment has been made.

Q. Then you do not await the furnishing by the consignee of the paid collect freight bill in making adjustment to him for the freight allowance?

A. No, we do not.

Exam. WAY: What do you do—render a bill on the consignee?

The WITNESS: It is deducted off of the face of the invoice.

Q. (By Mr. TAYLOR) Is that method of handling, which you have just related, common to other shipments made by your concern?

A. It is common to all of these shipments we have 791 in the exhibit.

Q. And how long have you been using the facilities of P. C. W. A. during which you have used this method of handling?

A. Oh, I would say about eight or nine years.

Q. And it has been customary for your concern to absorb the freight charges in connection with all of these shipments to the West Coast via P. C. W. A., which have moved on a collect basis, is that correct?

A. That is correct.

Q. Mr. Schmidt, has your company ever had occasion to file claims or loss or damage?

A. Not that I can recall, no.

Q. Not with P. C. W. A.?

A. Not that I can recall.

Exam. WAY: What is the basis of the rate that has been charged on the particular shipment you are talking about? Is that the truck rate to Chicago?

The WITNESS: That is the rail rate to Chicago.

Exam. WAY: The rail rate to Chicago?

The WITNESS: The rail rate to destination.

Exam. WAY: Rail all the way through, then?

The WITNESS: That is right, rail to destination; tariff rates.

Exam. WAY: Now, is that a through rate, a joint through rate?

792 The WITNESS: That is a through rate, yes, sir.

Exam. WAY: A through rate. How is it made up?

The WITNESS: Well, that is a regular rail tariff so I don't know just how it is made up. But that is the rate that we got from our traffic department that gives us those rates. We have a card system that shows all rail rates to all points we ship to.

Exam. WAY: All right. Then that is the through rate from Milwaukee to destination at Portland?

The WITNESS: That is correct.

Exam. WAY: Proceed.

Q. (By Mr. TAYLOR) Mr. Schmidt, I am not so clear on your testimony. Do you mean to say that the rate charged you or your customer from Milwaukee through Chicago to the West Coast by these facilities that you have described is or is not a freight forwarder basic rate?

A. No. It is a rail tariff rate.

Q. Do you know whether that compares with the freight forwarder charges, that is to say, the rates from Milwaukee to these various points—is it comparative?

A. It is comparative, yes.

Q. And it is the same?

A. As far as I know, yes.

Mr. TAYLOR: That is all.

Exam. WAY: Cross examination.

793 Cross Examination.

Q. (By Mr. WHEAT) Now, as a matter of fact, Mr. Schmidt, this amount that you have shown on this particular document you have been mentioning, this V48280, isn't a rate at all: it is a freight allowance made by your company, isn't that correct?

A. That is correct, yes.

Q. And your only arrangement is with your customer, in this case Ballou & Wright, isn't that true?

A. That is right.

Q. And you don't allow any freight to P. C. W. A. but you allow it to the customer?

A. That is correct.

Q. And your only connection with P. C. W. A. is in following the instructions received by your customer, Ballou & Wright, as per the photostatic copy of the letter, which is included in Exhibit 33, isn't that correct?

A. That is correct, yes, sir.

Q. You have no means of knowing, have you, what Ballou & Wright pays us freight?

A. We don't know.

Q. You don't care, do you?

A. No, we don't care.

Q. By the way, just to clear it up, Mr. Spielmann is connected with your company, is he?

794 A. That is right.

Q. And you are here appearing in his place, I take it?

A. Yes.

Q. Who prepared this document, this larger sheet?

A. That was done by Mr. Spielmann.

Q. In your office?

A. That is right.

Q. But, I take it, you are assuming responsibility for it here as a witness for your company?

A. That is right.

Q. Now, would you say that all of the instances of shipments, where you consign freight to P. C. W. A. and name as a sub-consignee the members of P. C. W. A., which are included on Exhibit 33, reflect the same kind of a transaction which you have explained with respect to this one of Ballou & Wright?

A. That is right.

Q. When you use the term, or, when you answered counsel for the Commission who asked you whether you shipped through the facilities of P. C. W. A. or whether you were using the facilities of P. C. W. A., did you or did you not merely mean by your affirmative answer that you consigned the freight in question to P. C. W. A. showing your customer as a sub-consignee as instructed by your customer?

A. That is right.

Mr. WHEAT: Thank you.

795 Q. (By Mr. GIVAN) Have you ever tendered a shipment to P. C. W. A. in an instance where you did not have this specific instruction from your customer to do so?

A. Not to my knowledge, no.

Mr. GIVAN: No other questions.

Exam. WAY: Mr. Ames?

Q. (By Mr. AMES) Mr. Schmidt, is the document I hand you, identified as invoice V48280, the document that is properly associated with the bill of lading I hand you?

A. That is correct.

Q. Those two constitute one transaction?

A. That is right.

Q. The bill of lading is identified as number V43229?

A. No. This is the bill of lading number down here, "V1311."

Q. "V1311" in the lower right hand correct?

A. That is correct.

Q. That shipment, I take it, constituted a sale by your company and a shipment to Ballou & Wright of two jacks priced at $55.30 each?

A. Correct.

Q. And your invoice shows the price that you made to them, or an amount you billed them, a total amount, of $110.60 for two jacks?

A. That is correct.

796 Q. As a deduction from that you have taken off the sum of $26.13 and billed them for the balance?

A. That is correct.

Q. That $26.13 exactly corresponds, does it not, to the rate, the transportation rate, of $3.35 a hundred multiplied by 780 pounds in the shipment?

A. That is correct.

Mr. AMES: That is all.

Exam. WAY: Anything further?

(No response.)

You are excused.

(Witness excused.)

Mr. TAYLOR: Exhibit number 33 is offered in evidence.

Mr. WHEAT: No objection.

Exam. WAY: It is received.

(Commission's Exhibit No. 33, Witness Schmidt, was received in evidence.)

Mr. MAGUIRE: Mr. Examiner, if I might, I would like to state at this time that I have about four witnesses, and I was just wondering what the schedule would be in so far as putting them on the stand.

Exam. WAY: Off the record a moment.
(Discussion off the record.)
Exam. WAY: On the record.
Call your next witness.
797 Mr. TAYLOR: I will call Mr. F. G. Harris.

F. G. HARRIS, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your name?
A. F. G. Harris.
Q. Mr. Harris, are you employed by the Imperial Manufacturing Company of Chicago?
A. Right.
Q. And what is your position, please?
A. Assistant to the treasurer.
Did you say the "Imperial Brass?" It should be the "Imperial Brass Manufacturing Company" not the "Imperial Manufacturing Company."
Q. The Imperial Brass Manufacturing Company. Thank you, sir.
A. Right.
Q. And, as assistant to the treasurer, do your duties also include the supervision of transportation, rail and truck, of your merchandise?
A. It doesn't include supervising. We are closely connected and we pay all of our freight bills, all our invoices.
Exam. WAY: And you are appearing here under subpoena?
The WITNESS: That is right.
Q. (By Mr. TAYLOR) How long have you been em-
798 ployed as assistant to the treasurer?
A. For ten years.
Q. Is your concern a member of the Pacific Coast Wholesalers' Association?
A. No, we are not.
Q. Has your firm ever been a member of that Association?
A. To my knowledge, no.
Q. Does your concern ship its merchandise using the facilities of the Pacific Coast Wholesalers' Association?
A. Yes, we do.
Q. And is that upon direction of the Pacific Coast Wholesalers' Association, or individual members thereof who are your customers?

A. Well, we call the P. C. W. A. when we have shipments for California or Washington.

Q. You call them?

A. We call them to pick up that merchandise.

Q. That is to say, you call the P. C. W. A. consolidation warehouse here in Chicago which, I understand, is the Transport Terminal Warehouse Company?

A. Right.

Exam. WAY: What is your answer?

The WITNESS: Right.

Q. (By Mr. TAYLOR) And is that practice in conformity with general instructions from your customers?

799 A. We do not have—answering this way, we do not have any recent correspondence in our files pertaining to these customers telling us to ship P. C. W. A. However, we do make certain shipments to those customers by that method.

Mr. TAYLOR: Mark for identification Exhibit number 34, which contains thirty-four photostatic copies of Imperial Brass Manufacturing Company, Chicago, invoices, original paid freight bills, headed "Pacific Coast Wholesalers' Association," bills of lading, purchase orders; and, attached thereto, a recap statement of the shipments contained in this exhibit which, it appears, represents seven individual shipments.

(The documents referred to were marked as Commission's Exhibit 34, Witness Harris, for identification.)

Q. (By Mr. TAYLOR) Mr. Harris, handing you Exhibit 34, I will ask you, please, to briefly follow through from your—

A. (Interrupting) I don't believe that is a copy of my photostats.

Q. (By Mr. TAYLOR) Pardon me, let me continue the question.

(Continuing) and follow through the first shipment contained therein from your plant to your customer on the West Coast as indicated thereon. I am referring, please, to order number 73734, customer's number J3540. Do you have the original of that document before you, Mr. Harris?

A. You want the original copy?

Exam. WAY: Off the record.

800 (Discussion off the record.)

Exam. WAY: On the record.

Q. (By Mr. TAYLOR) Mr. Harris, it appearing that the said exhibits are not intact or complete with respect to that particular shipment—

Mr. WHEAT: (Interposing) I think they are complete. We have the complete documents on that. They are down below there (indicating).

Mr. TAYLOR: I am unable to find the balance of them in my file, and Mr. Ames reports that he is unable to find the balance of them.

Mr. AMES: I can't find them.

Mr. WHEAT: All right.

Q. (By Mr. TAYLOR) We will go on to the next shipment, identified on the bill of lading number A-20638, which is the bill of lading form, the printed form, of the Imperial Brass Manufacturing Company, dated September 28, 1945. Do you have the copy of that bill of lading before you, Mr. Harris?

A. I do.

Mr. WHEAT: Now, may we just have a moment so we can find that?

What is that number, off the record, please?

Exam. WAY: 81466.

Mr. WHEAT: Thank you.

801 Q. (By Mr. TAYLOR) Now, do you also find the photostatic copy of the original freight bill, number CLA1595-3, dated at Los Angeles, October 8, 1945, which is companion to that bill of lading?

A. Yes, I do.

Q. And does the bill of lading show, in the right hand column, prepaid destination?

A. Right.

Q. And does that indicate that your concern forwarded that shipment on a prepaid basis from Chicago to San Diego going for delivery to Motor Hardware & Equipment Company?

A. That is right.

Q. Now, referring back to the paid freight bill, number 1595-3, does that freight bill, headed "Pacific Coast Wholesalers' Association," show the charges to have been prepaid?

A. Yes, it does.

Q. And it also shows that the shipment consisted of two packages, total weight 212 pounds, rate $2.70, total charges $5.72 plus $0.17 taxes?

A. Right.

Q. Through charges prepaid $5.89, is that correct?

A. Yes, sir.

Exam. WAY: Will you find those for me in this bunch of Exhibits? I can't find it.

Mr. WHEAT: Pardon me, Mr. Taylor, I see no notation, "tax"; it just says $0.17 on my copy.

802 Mr. TAYLOR: Yes, 17 cent taxes.

Mr. WHEAT: It says 17 cents only.

Mr. TAYLOR: I will ask the witness what that 17 cents represents.

Mr. WHEAT: If he knows.

The WITNESS: Tax. It is on all the others shown as tax; all the other copies of exhibits.

Q. (By Mr. TAYLOR) That is a customary federal tax shown on every freight bill, is it not, Mr. Harris?

A. That is correct.

Q. And how is that tax calculated, Mr. Harris?

A. That I am unable to answer. I could find out for you, if you so desire.

Q. You don't know whether that represents three cents on each dollar of freight charges?

A. No, I do not.

Exam. WAY: Just a moment. Now, can you find that which you are talking about?

The WITNESS: I can't find that one.

Exam. WAY: That which you have been talking about is not in this exhibit.

Mr. TAYLOR: It is in my exhibit and I will ask Mr. Ames and Mr. Anderson and Mr. Koch to make an additional search of the records.

The WITNESS: Here it is, sir.

803 Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Go ahead. What is the next one?

Q. (By Mr. TAYLOR) Mr. Harris, was any part of these charges which were prepaid in connection with this and other shipments which have been made by your concern, ever reimbursed to your concern by the Pacific Coast Wholesalers' Association, or by a member thereof, or by a customer?

A. I am afraid I can't answer that question just like that. Our product, copper tubing, is the only product that we ship f. o. b. destination. On that copper tubing no part of this freight is reimbursed by the customer or by any other person.

Q. Does your concern ship to the West Coast to Motor Hardware & Equipment Company at San Diego any other

merchandise than tubing, the copper tubing, which you have just described?

A. Yes, we do.

Q. And in connection with other merchandise, then, you do not prepay the charges on that?

A. We do not.

Q. And with respect to Exhibit Number 34, concerning which you are now testifying, do the shipments therein, if you have examined the exhibit, all consist of copper tubing shipments?

A. I have not seen a copy of that exhibit. They are not photostats that we have submitted to the Commission.

804 Q. I will hand you the exhibit which I have and will ask you to examine it, please? (Handing documents to the witness.)

A. That is correct.

Q. Your answer is "yes"?

A. Yes.

Mr. TAYLOR: Thank you. That is all I have.

Cross Examination:

Q. (By Mr. WHEAT) Mr. Harris, when you used the word "Prepaid," you didn't mean to indicate to the Commission, did you, that you tender an amount of money when this freight leaves your concern's establishment, and that that is received by some railroad or motor carrier? You pay afterwards, do you not?

A. We pay after the Pacific Coast Wholesalers' Association submits their freight bill.

Q. Yes. In other words, you don't actually prepay any shipments?

A. No, not in that sense. No.

Q. What you mean is that you absorb the freight?

A. We absorb the freight.

Q. Now, are we to understand that that is only in respect to shipments of copper tubing?

A. Right.

Q. And all other materials are shipped f. o. b. the point of origination?

A. That is correct.

805 Q. And copper tubing is shipped f. o. b. destination?

A. Right.

Q. Is that a general practice of your concern?

A. Yes, it is the sales policy that we have adopted.

Q. And that applies to all shipments of more than 100 pounds in any single shipment of copper tubing, does it?

A. Right.

Q. Now, I note on the documents first discussed by counsel for the Commission, your order number 73734, which I have before me, that you consigned that particular shipment to Pacific Coast Wholesalers' Association, 900 South Wells Street, Chicago, "According to standing instructions." I will ask you whether those instructions were received by your concern from your customer, the Motor Hardware & Equipment Company?

A. I would say yes, if it was not printed on our form, that is our standing instruction.

Q. That is instructions from your customer in California?

A. That is right.

Q. Thank you. Did you make up this large recap sheet, which is photostated and marked sheet number 1?

A. No, sir.

Q. Who made that?

Mr. KOCH: I made that up from the documents received from Mr. Harris.

Mr. WHEAT: May the record show your name, sir?

806 Mr. TAYLOR: Off the record for just a moment?

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Mr. WHEAT: May the record, then, show Mr. Koch's relationship to the Interstate Commerce Commission?

Mr. TAYLOR: No objection.

Mr. WHEAT: Mr. Koch might state that.

Exam. WAY: There is no use quibbling about that particular sheet. It has been introduced as an exhibit and everybody is entitled to know who prepared it.

Mr. TAYLOR: The sheet, as I understand it, was prepared by Mr. Cook personally as an abstract for the use of this hearing to be helpful. It is an abstract of the shipments contained in Exhibit Number 34, and that is all it is I understand from Mr. Koch.

Mr. WHEAT: Then who prepared it and what is his name and what is his position with the Interstate Commerce Commission? That is all I am asking.

Exam. WAY: Give your name.

Mr. KOCH: H. D. Koch, District Supervisor, Bureau of Water Carriers and Freight Forwarders.

Exam. WAY: For the Interstate Commerce Commission?

Mr. KOCH: For the Interstate Commerce Commission.

807 Q. (By Mr. WHEAT) Now, the only question I wanted to ask the witness is this: Does that sheet, not prepared by you but offered as part of Exhibit 34, contain a statement of all of the photostatic documents which were attached to it as a part of Exhibit 34?

A. I would have to examine it and tell you. I have not seen it.

Mr. KOCH: I can answer that.

Mr. WHEAT: I am asking this witness and Mr. Koch has not been sworn. I just want to find out.

Exam. WAY: All right, examine them and see if they are there, please.

Mr. WHEAT: I really think we ought to know what is in this exhibit, Mr. Examiner. That is the purpose of this question.

Exam. WAY: You certainly should.

The WITNESS: May I take it?

Exam. WAY: You can look at it, yes.

Q. (By Mr. WHEAT) Just to get the record straight so you will get it squared away with respect to this sheet number 1, I thought you said on direct that certain documents that you had in front of you, and which were handed you this morning, were not the documents submitted by you to the Commission?

A. I didn't infer that they were not the documents; they were not the photostatic copies that our firm submitted to

808 the commission. We made our photostatic copies of which I have a copy here. These that you have on record are not the same copies that I made.

Mr. TAYLOR: Mr. Wheat, may I say something?

Mr. WHEAT: Yes. Surely.

Mr. TAYLOR: As I understand it, in order to lighten the burden of this corporation and others, the Commission, when there was a reluctance on the part of the corporation to release their original records, then requested them to furnish a single photostatic copy of each document requested by the Field Agent, and the Commission, in turn, photostated the photostatic copies which they had received, and that is the reason for this situation.

Q. (By Mr. WHEAT) Do you so understand it, Mr. Witness?

A. As I understand it, we submitted six copies of the photostats which I have in front of me to the Commission.

Q. Of each document?

A. Of each document.

Q. And what you meant when you said that these were not the same photostats submitted was that they were photostats of the same documents but done by some one else?

A. That is right.

Q. But you didn't infer that they were different documents?

A. No, not at all.

Mr. TAYLOR: They cover the same shipments but are different documents—I mean, different photostats?

809 The WITNESS: That is right.

Q. (By Mr. WHEAT) Just to clear the record, will you look over these documents and show me one which has the word "tax" on it?

A. I have already done that and I find no "tax" mentioned on any of these.

Q. Thank you very much. All your arrangements with respect to these shipments are with your customers, are they not, rather than with P. C. W. A. and such?

A. I would like to answer that like this. We call P. C. W. A. for any of our Coast shipments.

Q. But I understood you to say that was because of instructions from your customers, those standing instructions.

A. That referred to that one which gave us our standing instructions.

Q. Is there any instance where you don't have any standing instructions from your customer?

A. Yes.

Q. Show me one.

A. Not on copper tubing.

Q. Show me in this exhibit where you don't have any instructions to ship and consign to P. C. W. A.?

A. I have none.

Q. What you really meant was you consign to P. C. W. A. because you understand that is what your customer wants you to do?

810 A. No, sir, I won't answer it that way.

Q. Answer it any way you want to.

A. We call P. C. W. A. and ask them if they want to pick up that shipment for the West Coast.

Q. Did P. C. W. A. ask you to do that?

A. I don't know.

Q. Can you find out or answer where P. C. W. A. ever asked you to do that as contrasted with your customers asking you to do that?

A. No, I can't. No.

Q. You don't believe there is such an instance, do you?

A. I don't believe there is.

Mr. WHEAT: That is all.

Q. (By Mr. AMES) Now, Mr. Harris—

Mr. TAYLOR (Interposing) Just a moment please. I want to question the witness in connection with the freight bill raise here on which he has also left the witness in a confused status. I would like to straighten that out, if I can.

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

We will recess until two o'clock.

(Whereupon, at 12:30 P. M., a recess was taken until 2:00 P. M. of the same day.)

811 Afternoon session: 2:00 P. M.

Exam. WAY: Come to order, please. Mr. Wheat.

Mr. WHEAT: Mr. Examiner, I should like to associate with me, during this Chicago hearing, as counsel for the respondent, Mr. Samuel M. Kane, who is admitted to practice before this Commission and whose address is 77 West Washington Street, Chicago.

Exam. WAY: What is his interest in it?

Mr. WHEAT: He has represented P. C. W. A. in other matters and is interested in the Chicago end of the situation.

Exam. WAY: He is representing the respondent here?

Mr. WHEAT: Yes, sir; associated with me at this time for this hearing.

Mr. MAGUIRE: I would like to make a statement. I advised the Examiner this morning that we would have some witnesses that would introduce testimony. But after conferring with my people, during the recess period, we have arrived at the decision that we will not present any testimony in these proceedings.

Exam. WAY: You will not?

Mr. MAGUIRE: That is right.

Mr. WHEAT: May I ask whom you represent?

Mr. MAGUIRE: Cloverleaf Freight Lines, Inc., Interstate Dispatch, Inc. and Middle States Motor Freight.

Exam. WAY: Mr. Reporter, will you please refer
812 back on your notes and see what is pending on the record?

(Record read.)

Exam. WAY: All right, Mr. Taylor, resume your questioning.

F. G. HARRIS, resumed his testimony as follows:

Direct Examination—Continued.

Q. (By Mr. TAYLOR) Mr. Harris, referring again to Exhibit Number 34, freight bill number 1595-3, the bill you were testifying to, the freight bill you were testifying to, and also in connection with which, I believe, Mr. Wheat examined you with respect to prepayment of charges, I believe you replied to his question, as to whether the bill indicated that the charges were prepaid, that they were not actually prepaid by you, is that correct?

A. They were not prepaid at the time the shipment was picked up, no. Pacific Coast Wholesalers' sent us their bill.

Q. That bill is dated October 8th, 1945, isn't it?

A. Right.

Q. And on its face it shows, "Pacific Coast Wholesalers' Association". I will ask you if, in the prepaid column of this photostatic copy of the original prepaid freight bill the amount of charges are shown to have been prepaid?

A. That is correct. But we have credit with the Pacific Coast Wholesalers' Association. If we did not have credit that would have been paid at the time that shipment
813 was picked up at our plant.

Q. With respect to the consignee, Motor Hardware & Equipment Company, San Diego, do you know whether or not that concern is a member of Pacific Coast Wholesalers' Association?

A. No, we do not.

Q. Do you recall whether in this instance that customer directed you to bill via the services of Pacific Coast Wholesalers' Association, or whether the Association itself instructed you to so bill this freight?

A. If you will refer to the exhibit, it is on Motor Hardware & Equipment Company's purchase order to us.

Q. Does that order show that you are to bill via the services of Pacific Coast Wholesalers' Association?

A. That is correct.

Mr. WHEAT: Where is that order?

Exam. WAY: Yes.

The WITNESS: The fourth item after the freight bill.

Mr. AMES: Wait a minute until I identify it, will you?

Exam. WAY: I don't find that that has been submitted as a part of this exhibit.

Mr. AMES: Let us get it in.

Exam. WAY: Oh, I see it here.

Mr. TAYLOR: The document under discussion is headed, "Purchase order Motor Hardware & Equipment Company."

Mr. WHEAT: Which number?

814 Mr. TAYLOR: Number J-2076.

Mr. AMES: Now, Mr. Examiner, on my copy that instruction is blurred and indistinct. Could we have that instruction quoted in the record, that shipping instruction?

Exam. WAY: Yes.

Mr. AMES: See, mine is indistinct. I can't read it.

Exam. WAY: Yes. And I think it is so on all of them. Read it into the record.

The WITNESS: "Ship to Pacific Coast Wholesalers' Association, 900 South Wells Street, Chicago, according to standing instructions.

Q. (By Mr. TAYLOR) And do you know who placed that stamp on that purchase order?

A. No. Only it was there when the order was received in our office.

Q. From?

A. Motor Hardware & Equipment Company.

Exam. WAY: Is that a stamp or is that printed?

The WITNESS: That is a rubber stamp.

Mr. TAYLOR: That is all.

Cross Examination—(Continued).

Q. (By Mr. WHEAT) Well, then, you did get instructions from your customer, didn't you, to ship in the manner in which you did?

A. In this instance, yes, we did.

815 Q. Are there other instances when you don't?

A. On the Yakima Hardware Company and Featherstones, Inc., we have standing instructions to ship by way of P. C. W. A. We cannot locate that order in our office. It has been standing for years, ten years, at least.

Q. Then your answer to counsel for the Commission was a bit misleading, wasn't it, when you said you shipped under instructions from P. C. W. A. itself? Don't you want to change that to conform to your latest answer to the effect that you do have instructions, either in the manner you just testified, or standing instructions, via P. C. W. A. to these particular persons?

A. I can't answer that in all cases.

Q. Well, do you know if there is any time when you have shipped showing P. C. W. A. as consignee when you haven't had some kind of instructions by a member of the P. C. W. A. to do so?

A. We would call P. C. W. A. in many instances when we had a California shipment and ask them if they would pick it up. In no instance do I know of where they have picked up where we have ever had a complaint from our customer in shipping that way.

Q. So far as you know, never has any such shipment been picked up except for a member of P. C. W. A.?

A. To our knowledge, no.

Mr. TAYLOR: Are you familiar with the membership of P. C. W. A.?

The WITNESS: No, sir.

816 Mr. TAYLOR: Then you are in no position to know, are you, at the time you bill out this merchandise on those instructions such as you have there, whether or not you are shipping to a member of the P. C. W. A. or to somebody who is not a member?

The WITNESS: I do not.

Mr. WHEAT: I would like to know here, Mr. Examiner, whether it is the position of Commission's counsel whether P. C. W. A. doesn't know they are members, or whether they are persons designated by members. If it is, then we ought to know it as part of the issues.

Mr. TAYLOR: We certainly are interested in whether shipments are going to a member or to a customer of a member.

Mr. WHEAT: Are you making that assertion here and attempting to prove it at this time? I think we ought to know the issues that we are trying.

Mr. AMES: Mr. Examiner, I think we ought to have a right to stand on the shipments. The exhibits show the Motor Hardware & Equipment Company as the name of the consignee.

Exam. WAY: We are trying to ascertain the facts with respect to all these shipments that have been made and the general practices of the Pacific Coast Wholesalers' Association.

Mr. WHEAT: That is right.

Exam. WAY: So far the freight bills and other documents which have been presented here will speak for themselves.

Mr. WHEAT: Well, if that is the understanding,
817 and if they do speak for themselves I have no question about it. The only thing was that counsel for the Commission was apparently going beyond this, and I agree with Mr. Ames with respect to these exhibits.

Mr. TAYLOR: You will recall, Mr. Wheat, that you did ask this witness, before the noon recess, to retract in effect a statement he had made to me on direct as to the status of these prepaid freight bills, and I was only attempting to straighten out the matter again as I thought it was at the time I turned him over to you.

Mr. AMES: Mr. Examiner, it is my observation that we should rely upon the documentary evidence. The record is based upon an assumption, of course, that before the conclusion of this series of hearings we shall have an official up-to-date list of the Pacific Coast Wholesalers' Association.

Exam. WAY: It is understood that we will have that introduced at Los Angeles.

Mr. AMES: And the dates that they joined.

Mr. WHEAT: We will give the Commission what it desires, Mr. Ames, and you can ask any questions you wish about them.

Mr. TAYLOR: That is all, Mr. Examiner.

Exam. WAY: Mr. Wheat, anything further?

Mr. WHEAT: No.

Exam. WAY: Mr. Ames?

Mr. GIVAN: May I ask some questions?

818 Exam. WAY: All right.

Q. (By Mr. GIVAN) Mr. Harris, I would like to pursue that matter just a little further because, frankly, I am not clear on your answer. What considerations govern you in selecting P. C. W. A. as a means of having shipments shipped to the West Coast?

A. We don't select. We just ask them if they want to pick up a shipment for a certain customer.

Q. Why would you call P. C. W. A. instead of calling the railroad or forwarding company or truck lines?

A. We might call them both.

Q. In other words, one of the questions involved here is whether or not you ever use P. C. W. A. except upon the request of one of their members. Do you ever call them up without a request?

A. Without their request?

Q. Without a request from their customer?

A. To my knowledge, we call them when we have shipments or should ship P. C. W. A.

Q. What makes you think you should ship?

A. That is entirely up to the Traffic Manager. I can't answer that.

Q. When P. C. W. A. submits a freight bill to you, have you ever made any effort to ascertain how the rate shown on that freight bill is determined?

A. No, I haven't. Our Traffic Manager approves the rate and we pay in the accounting department according to his approval.

819 Q. You don't know what that rate is?

A. I don't. He is supposed to check the tariff regulations. That is all.

Mr. GIVAN: That is all I have.

Exam. WAY: Mr. Ames.

Q. (By Mr. AMES) Mr. Harris, there has been testimony in this case that when a producer or a shipper outside of Chicago uses the facilities of the P. C. W. A. to get to the West Coast that they originally consign the shipments, say, from Cleveland to Chicago, naming the P. C. W. A. as the consignee.

Now, it so happens that you are located in Chicago and so is the P. C. W. A. I now hand you a bill of lading, which is a part of Exhibit 34, and which is identified with freight bill CLA 1595-3, about which Mr. Taylor questioned you. Who is indicated on that bill of lading as the consignee in the place assigned for that indication?

A. Consigned to the Motor Hardware & Equipment Company.

Q. At where?

A. At San Diego.

Q. And that is in the place opposite the words "Consigned to"?

A. Right.

Q. Where is the P. C. W. A. indicated on that bill of lading?

A. Up in the memorandum part of the bill of lading.

Q. Up in the top part of the bill of lading?

A. That is right.

820 Q. Where you ordinarily indicate the originating carrier?

A. That is right; or routing.

Q. Now, you were questioned about this item of three per cent, about whether it was a tax or not. Whether it is a

tax or not it is always three per cent, which is added, isn't it?

A. It is usually three per cent on our freight bills.

Q. Can you find any illustration in there where it is other than three per cent?

A. No, I cannot.

Mr. AMES: That is all.

Exam. WAY: You are excused.

(Witness excused.)

Mr. TAYLOR: Mr. Roger Lange.

Exhibit Number 34 is offered in evidence.

Mr. WHEAT: No objection.

Exam. WAY: It may be received.

(Commission's Exhibit No. 34, Witness Harris, was received in evidence.)

ROGER M. LANGE, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your name?

A. Roger M. Lange.

Q. Mr. Lange, are you employed by Walker Manufacturing Company?

A. Yes, sir.

821 Q. Racine, Wisconsin?

A. Yes, sir.

Q. What is your position with that firm?

A. I am the traffic manager.

Q. And how long have you been employed in that position?

A. About three and one half years.

Q. Is your concern a member of Pacific Coast Wholesalers' Association?

A. No, sir.

Q. Has it ever been a member?

A. No, sir.

Q. What is the nature of the merchandise which your firm manufactures and ships?

A. The commodities that we ship to the West Coast effected by this matter are jacks, both wheeled and not wheeled, and also automobile lifts.

Q. Does your company, in its transportation arrangements, ship via the services of Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. How long has it been so shipping?

A. It was service that was being used as long as I have been employed.

Q. Do you recall the circumstances which prompted your concern to use those facilities?

822 A. No, sir. That was before I was employed there.

Q. Then, the shipments have been routed via P. C. W. A. for at least three and one-half years, to your knowledge?

A. Yes, sir.

Mr. TAYLOR: Please mark for identification as Exhibit 35 photostatic copies of shipments made during the year 1946, consisting of freight waybills, invoices, shipping record and purchase orders of Walker Manufacturing Company in connection with what appears to be nine separate part lot shipments, to which photostats is also attached a recapitulation sheet of those shipments, two sheets of recapitulation, rather.

Mr. Reporter, make that eight representative shipments instead of nine.

(The documents referred to were marked as Commission's Exhibit 35, Witness Lange, for identification.)

Mr. WHEAT: I was thinking we ought to have the record show that it is eight shipments. We don't know that it is representative unless it is a part of the testimony, Mr. Taylor.

Q. (By Mr. TAYLOR:) I will ask the witness if the photostats making up Exhibit 35 are representatives of shipments made by his concern via the P. C. W. A.?

A. Yes, sir.

Q. Mr. Lange, will you please take the first ship-

823 ment and explain how your firm handles the transportation using P. C. W. A.?

A. The shipment begins with—

Q. (Interposing) Using shippers' number 41736, dated October 18, 1946, as indicated by the freight waybill.

A. On this shipment we received the customers' purchase order 64481, dated September 5th, 1946, requesting that we ship to The Salt Lake Hardware Company in case of C. D. Cheney, Evanston, Wyoming, via P. C. W. A., as indicated by rubber stamp on the bottom of the order, to Evanston, Wyoming. The shipping order and the invoice attached would show that the freight was allowed on the invoice in the amount of $3.46, and the freight waybill, which is a copy of our five form bill of lading. In other words, it is an exact copy of the bill of lading showing that the ship-

ment was routed via P. C. W. A. as requested by our customer.

Q. And which document there shows a request for such shipment via P. C. W. A. by your customer?

A. The purchase order of The Salt Lake Hardware Company, number 64481, right here (indicating).

Q. Do you know whether The Salt Lake Hardware Compay is a member of the Pacific Coast Wholesalers' Association?

A. We have received a letter from them, besides having all of the purchase orders brought to our office, marked "Ship by this line." That is all we know.

Q. Do you know whether or not C. D. Cheney—

824 How do you spell it?

A. C-h-e-n-e-y.

Q. (Continuing) —of Evanston, Wyoming, is a member of P. C. W. A.?

A. We don't know.

Q. Do you customarily handle shipments in this manner upon the direction of The Salt Lake Hardware Company that is for direct shipment to their customer?

A. Yes, sir.

Q. Did this shipment move on a prepay or a collect basis?

A. We shipped collect.

Q. And did your concern absorb the freight charges in the final analysis of the transaction?

A. Yes, sir.

Q. And what documents shows that?

A. A copy of the invoice shows that the freight was deducted in the amount of $3.46.

Q. And is it customary for your concern, in all of the shipments over P. C. W. A. to customers on the West Coast, to absorb the freight charges in your contracts?

A. Our terms are f. o. b. shipping point with freight allowed on the invoice based upon the lowest tariff rate of freight.

Q. And is that customarily a rate comparable to the rate shown in the freight forwarder tariffs?

A. Yes, sir.

Q. Does your concern file claims for loss or dam-

825 age with P. C. W. A.?

A. No, sir, we never have, to the best of my knowledge.

Mr. Taylor: I believe that is all.

Cross Examination.

Q. (By Mr. WHEAT) Mr. Lange, who selected these particular shipments that you have included on Exhibit 35 to be brought here to this hearing?

A. I did.

Q. Out of all the things that you have in your office?

A. That is right.

Q. And how did you go about selecting it?

A. We have several accounts on the West Coast that have directed us to ship via Pacific Coast Wholesalers' Association, and I took representative shipments from each one of those particular accounts.

Q. So that for all the accounts that you have used or consigned goods to the Pacific Cost Wholesalers' Association, you have at least one or two examples in this group?

A. Yes, sir.

Q. And I understood you to say that it was a general practice where one of those persons or corporations instructed you to do so that you would send the goods to their customers, wherever they might be, such as the one to some point in, well, such as the Exchange Garage, San Francisco, California, which is shown on the documents to be a customer of Chanslor & Lyon?

826 A. Well, I probably wasn't exactly correct in my statement. Up to a few months ago, if the consignee or customer of ours requested a shipment via P. C. W. A., whether it was going as a direct shipment or to a dealer of his, we would follow the routing request; but we have made a practice, in the last half of 1946, to refuse to ship via Pacific Coast Wholesale s' Association unless it is a direct shipment to the member.

Q. I see. Why did you do that?

A. Well, being a traffic representative we, of course, are interested in rates and the cost of shipment. It hasn't been understood 100 per cent by me as to why the freight allowance on our invoice would exceed what the customer would be required to pay for freight charges. In other words, in my opinion, it would seem that he is getting a profit on our freight allowance.

Mr. TAYLOR: Who is getting a profit on your freight allowance?

The WITNESS: The member.

Mr. TAYLOR. The member of the Pacific Coast Wholesalers' Association?

The WITNESS: That is right.

Mr. Taylor: On the customer's freight?

The Witness: Well, being that we ship to the member direct we have followed their instructions and shipped via Pacific Coast Wholesalers' Association, they being
827 members, and, then, having also in our files letters directing to ship that way. But on their dealer shipments we haven't followed these instructions because oft times it is to a small concern, such as a filling station that is installing a lift that, in many instances it has been our experience that there is a case of a missing part or damage and they try to toss the claim back on us. It has been good practice, as I see it, that the carrier that you are using is one that you can file a claim with. To the best of my knowledge I can't file a claim shipped via Pacific Wholesalers' Association.

Q. (By Mr. Wheat:) Did you ever try it?

A. No, sir.

Q. What do you mean to infer by your last remark?

A. The only thing I mean to infer is that I didn't know, and, as a result, I wanted to ship via a carrier that I was sure of.

Q. What kind of a carrier, rail or motor carrier, or what?

A. We ship most of our shipments west via freight forwarders.

Q. Which ones?

A. We use mostly all of them.

Q. How is that?

A. We use all of them.

Q. You do?

A. Yes, sir.

Q. Did any one of them tell you not to ship except by the direct members of P. C. W. A.?

828 A. No, sir.

Q. Did they tell you that was a good thing?

A. No, sir.

Q. Did they tell you that P. C. W. A. did not handle it in a proper manner?

A. No, sir.

Q. Let us take the Exchange Garage in San Francisco, 115 Battery Street. What is the difference in the rate from your place in Racine, Wisconsin, to the Exchange Garage, San Francisco, California, and the rate for the same shipment to Chanslor & Lyon Company, 740 Polk Street, San Francisco, California?

A. I wouldn't have any way of knowing.

Q. Well, do you not know there is no difference in rate? I would like a yes or no answer to that, please.

A. I am sorry, I can't answer it yes or no. Our invoice—

Q. (Interposing:) What do you know about rates to San Francisco?

A. I have the tariff in my office.

Q. Do you know whether there is a different tariff to 115 Battery Street and another one to 740 Polk Street, San Francisco?

A. Depending upon who would submit the freight bill to the man for collection. That is my argument here. If I ship via a freight forwarder I know that the rate
829 on that freight bill when it is delivered is exactly the same as on our freight allowance. If P. C. W. A. makes that delivery I have no way of knowing what rate is allowed to that man.

Q. What freight is allowed?

A. According to the debits received in our office, the difference between the freight allowance and the rate on the freight bill in many instances, the rate is exactly the same as that charged in the tariff on a regular freight forwarder freight bill.

Q. Certainly. Isn't it always that?

A. I can't tell you, sir. I don't see all the freight bills that go to the members.

Q. Do you know of any instance that it was?

A. I have here Pacific Coast Wholesalers' Association freight bill C. Y. K.—

Q. (Interposing) Is that a part of this exhibit?

A. Yes, sir.

Q. Where is it?

A. It is the next to the last item on page 2 of this recapitulation sheet.

Q. Which one is it? Is it dated August 29, 1946?

A. That is right.

Q. All right.

A. The rate shown to Yakima, Washington, is $3.46 a hundred. The rate shown on the Pacific Coast Whole-
830 salers' Association freight bill, C. S. E., dated 8/26/46 to Seattle, Washington, is $2.81 on the same commodity.

Q. What is the commodity?

A. Cartons of oil, petroleum in bottles.

Q. Now, did you receive these freight bills from the Pacific Coast Wholesalers' Association?

A. No, sir. We received them from Piston Service—

Q. Yes?

A. (Continuing) —supporting a debit for differences in freight as allowed on our invoice and that charged by the delivering carrier.

Q. And can you state now what carrier would give you a lower rate on the items shown on these two freight bills?

A. I can't say right offhand, no, sir.

Q. What is that?

A. I can't say offhand.

Q. Well, didn't you just get through implying that, Mr. Lange?

A. Yes, I did.

Q. All right. Then what did you mean by that.

A. Well, I have had no indication from any one that there is any possible way that I can check in my office from tariffs that I have on file the rates charged by the Pacific Coast Wholesalers' Association on collect shipments that are forwarded from our place.

831 Q. Now, didn't you get through on your direct testimony and didn't you testify that you would allow as freight the filed forwarder tariff? Didn't you?

A. Yes, sir.

Q. And don't you have that in your office?

A. Well, on these two particular—

Q. (Interposing) Let us go at it one by one, Mr. Lange. Don't you have that in your office?

A. Yes, sir.

Q. Do you know, then, from what you have in your office, what the filed forwarder rate is for a shipment from Racine, Wisconsin, to Piston Service, Incorporated, at Bremerton, Washington?

Well, let us take the one at Yakima, Washington, because, I think, that is the one you mentioned on the type of material described in your documents.

A. We do have that rate in our files, yes.

Q. Then that would be the amount that you had allowed Piston Service, Incorporated, for that shipment to Yakima, Washington?

A. It wasn't, sir.

Q. Wouldn't that be what you would allow?

A. The tariff rate of freight, yes, sir.

Q. Isn't that what you have testified?

A. Yes, sir.

Q. Then what did you allow that was different?

A. I don't have the shipping order in this record
832 to associate with this particular freight bill, but the freight bill indicates that the freight allowance on our invoice number 32356 totalled $13.74, which was short $2.80 of the freight charged by P. C. W. A. on this bill. Now, that rate, from which we arrived at the $13.74, was the rate taken from the tariff.

Q. Do you know whether it was on the particular commodity mentioned in this original freight bill of the Pacific Coast Wholesalers' Association?

A. That freight bill was checked with this, yes, sir.

Q. And you allowed how much to your customer?

A. $13.74.

Q. Then you didn't allow anything different from the forwarder rate, did you?

A. Not from the forwarder rate. No, sir, I didn't say that. I said that there was a difference in the freight charges on the P. C. W. A. freight bill and a different rate basis than what was on the forwarder's freight bill on the West Coast.

Q. Your arrangement is solely with your customer who may or may not be out on the West Coast and who may be a member of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. You deal with a great many people out there?

A. Yes, sir.

Q. And your arrangement with your customer is so that you will allow the freight, is that right?

833 A. Yes, sir.

Q. Now, you allow the existing forwarder rate on those small shipments?

A. Yes, sir.

Q. When something goes consigned to the Pacific Coast Wholesalers' Association, under direction of one of their members, you allow the same amount to your customer out there on that kind of a shipment that you allow to somebody not a member of P. C. W. A. on the same kind of shipment on the same date?

A. That is right.

Q. Well, then, your arrangement is solely with your customer, isn't it?

A. Yes, sir.

Q. You have no other arrangement with Pacific Coast Wholesalers' Association whatever—

A. (Interposing) No, sir.

Q. (Continuing) —then merely the instruction of one of their members to ship that way and to consign to them, isn't that true?

A. That is right.

Mr. WHEAT: That is all.

Mr. GIVAN: No questions.

Mr. TAYLOR: Pardon me, Mr. Ames, did you have a question?

Q. (By Mr. AMES) I would like to ask you a question on the first item in your Exhibit 35, which is the shipper's order number—

834 Is that his order number (indicating)?

A. Yes, sir.

Q. (Continuing) —65633.

Mr. WHEAT: Which one is that now?

Mr. AMES: That is the first one.

Q. (By Mr. AMES) (Continuing) Now, there you dealt with two people, did you not, The Salt Lake Hardware Company and C. D. Cheney?

A. Yes, sir.

Q. By whose orders did you ship to C. D. Cheney?

A. At the instructions of The Salt Lake Hardware Company.

Q. The Salt Lake Hardware Company, your customer?

A. Yes, sir.

Q. That shipment actually went to Evanston, Wyoming, didn't it?

A. Yes, sir.

Q. Now, I hand you a shipper's order number 57118. Can you identify that as a part of your Exhibit 35?

Mr. WHEAT: Where is that located, Mr. Ames?

Mr. AMES: I think that is probably the second batch from the top. Customer's order number 57118.

The WITNESS: Yes, sir.

Q. (By Mr. AMES) Now there you also dealt with two people, did you not, namely, Chanslor & Lyon Company,

835 San Francisco, and with Metro Motors on the Order of Chanslor & Lyon?

A. That is right.

Q. Do you know whether Metro Motors is a member of P. C. W. A.?

A. No, sir.

Q. Now, I hand you a customer's invoice number 57118 from Chanslor & Lyon. Now, can you identify that as a part of your Exhibit 35?

A. Yes.

Q. There you also dealt with two people, did you not, the Chanslor & Lyon Company and the Exchange Garage, both in San Francisco, California?

A. Yes, sir.

Q. Did you ship that freight direct to the Exchange Garage on the orders of Chanslor & Lyon?

A. Yes, sir.

Q. Do you know whether the Exchange Garage is a member of the P. C. W. A.?

A. No, sir.

Mr. WHEAT: I will stipulate that they are not right now.

Mr. AMES: Well, we have some more here, Mr. Wheat. Would you stipulate?

Mr. WHEAT: I will stipulate that in each instance where a shipment was made, covered by the large document at the head of Exhibit 35, where the consignee at destination is shown as someone who is not a member of P. C. W. A.
836 that those shipments were made on orders of members of P. C. W. A. as shown in the documents themselves.

Mr. AMES: My difficulty with that is that I don't know who are members. We don't have a list in evidence. If we did, why, I could check it.

Are you making a point that the members of P. C. W. A. not only have the right to instruct these producers to ship to themselves over P. C. W. A. but they also have the right to tell their producers to ship to any of their customers?

Mr. WHEAT: Why, certainly.

Mr. AMES: You make that contention?

Mr. WHEAT: Why, certainly.

Q. (By Mr. AMES) I have here a freight bill—I think it is a P. C. W. A. freight bill—but I would like to see your original in order to check that.

Mr. WHEAT: Is this a part of your exhibit?

Mr. AMES: Yes. It is the second one in the group of freight bills.

Mr. WHEAT: That doesn't mean anything.

Mr. AMES: You have a little group of freight bills attached together, nothing but freight bills.

Mr. WHEAT: Oh, yes.

Mr. AMES: It is the second one of that group.

The WITNESS: I have a certified copy inasmuch as the original was surrendered to Mr. Koch of the Inter-
837 state Commerce Commission.

Mr. AMES: Now, is the original here, Mr. Taylor? I don't know who rendered this freight bill. Maybe Mr. Olson can help me out.

Mr. WHEAT: If we knew which document you were talking about maybe we could.

Mr. TAYLOR: I understand, Mr. Ames, that Mr. Lange surrendered the original freight bill referred to to Mr. Koch, the Commission's District Supervisor, located here in Chicago, who is not present here at this time.

Q. (By Mr. AMES) Would that indicate to you, Mr. Lange, from your knowledge of your business that that is a freight bill of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

838 Q. Now, the consignee shown on that freight bill is —and, incidentally, it covers CSF-709-1, is that correct?

A. Yes, sir.

Q. (Continuing) The consignee shown on there is the Officer in Charge, Navy Overseas Freight Terminal, San Francisco, California. That is the main consignee on that paid freight bill.

Now, by whose directions did you ship that to the Officer in Charge of that freight terminal?

A. Shields-Harper & Company.

Q. Shields-Harper & Company?

A. Yes, sir.

Mr. WHEAT: We will stipulate that they are members of P. C. W. A.

Mr. AMES: Shields-Harper?

Mr. WHEAT: Yes.

Mr. AMES: Will you stipulate that the Officer in Charge of the Navy Overseas Freight Terminal is not?

Mr. WHEAT: I certainly will. Sure.

Q. (By Mr. AMES) Now, you have been asked questions about tariffs. Do you know whether the P. C. W. A. has any tariff?

A. No, sir, I don't.

Q. Do you have any tariffs of theirs on file in your office?

Mr. WHEAT: We will stipulate that they have not. I would like to cut this short, Mr. Ames.

839 Mr. AMES: You are cutting it short when you stipulate. That is all right. Keep on.

Mr. WHEAT: I will stipulate most of this.

Q. (By Mr. AMES) When you undertake to charge or make a notation of freight charges on your shipping pa-

pers, then, as I understand it, you have to look to tariffs of the regular freight forwarders?

A. That is right.

Q. Now, I told you to look at those tariffs in order to determine the charge you make?

A. We determine that in our office, being that our terms are based or supposed to be based on the lowest tariff rate of freight. And up until just a short time ago the freight forwarders rate were the lowest tariff rates of freight that we had available.

Q. So you did that on your own volition when you went to the freight forwarders tariff?

A. Yes, sir.

Q. Take the customers of your like Chanslor & Lyon or the Salt Lake Hardware Company. Do you know how much they pay the P. C. W. A. or how much the P. C. W. A. charges them?

A. No, sir.

Q. You don't know that?

A. No, sir.

Mr. AMES: That is all I have, Mr. Examiner.

840 Mr. TAYLOR: Exhibit 35 is offered in evidence.

Mr. WHEAT: I would like to ask another question or two on the line of Mr. Ames.

Exam. WAY: All right.

Q. (By Mr. WHEAT) When you spoke of those two shipments which show orders from Chanslor & Lyon and request to ship to one of them, which was the Exchange Garage and I have forgotten the name of the other, and you answered Mr. Ames that you had in each of those instances dealt with two people, did you really mean that, Mr. Lang? Didn't you really deal with Chanslor & Lyon and accept their instructions as to how to ship?

A. Yes, sir.

Mr. WHEAT: That is all.

Q. (By Mr. AMES) But you did ship to persons whom they instructed you to ship to?

A. Yes, sir.

Q. And you put their name on the bill of lading and you told the carrier, whoever it was, to transport the freight to them?

A. That is right.

Mr. WHEAT: One more question, then. Isn't that your common practice in respect to any of your customers?

The WITNESS: Yes, sir.

Mr. WHEAT: Sure. Thank you.

841 Exam. WAY: Exhibit 35 is received now.

(Commission's Exhibit No. 35, Witness Lange, was received in evidence.)

Mr. TAYLOR: Mark for identification Exhibit No. 36, which consists of eighteen photostatic copies of letters of shipping instructions from members of P. C. W. A. or customers of Walker Manufacturing Company.

(The documents referred to were marked as Commission's Exhibit No. 36, Witness Lange, for identification.)

Mr. TAYLOR: I also understand from Mr. Lange that there is no objection to the Commission marking for identification and offering as an exhibit in this proceeding its price lists, the file here consisting of fourteen sheets, the top one being headed, "U. S. Distributor Price List, Effective August 31, 1946, No. 1146-A," at the bottom of which top sheet shows, "Walker Manufacturing Company of Wisconsin," and I desire to particularly note under, "Delivery" that it reads: "We will allow freight not exceeding lowest tariff rate on shipments of Silencers and installation kits provided total weight of shipments is 100 pounds or more," etc.

Mr. Reporter, mark this for identification as Commission's Exhibit No. 37.

(The documents referred to were marked as Commission's Exhibit No. 37, Witness Lange, for identification.)

842 Direct Examination (Continued).

Q. (By Mr. TAYLOR) Mr. Lange, handing you Exhibit No. 36, as offered for identification, I will ask you if the photostatic copies of the letters between your concern and either the Pacific Coast Wholesalers' Association or individual members thereof; or, on the other hand, customers, if you do not know whether or not they are members, consists of the total file of instructions that you have to ship via P. C. W. A.?

Mr. WHEAT: I trust, Mr. Taylor, that you wouldn't inadvertently mislead the witness because he has so-called standing instructions. This wouldn't be the entire file.

Mr. TAYLOR: Let the witness answer that. I don't know whether it is all or not.

Mr. WHEAT: Yes.

The WITNESS: This isn't our entire file but was taken to show that we had received shipping instructions from the various members that are used in Exhibit 35, which would be the shipping documents attached to Exhibit 35.

Q. (By Mr. TAYLOR) Then, Exhibit 36 is offered only as information incidental to the shipping documents contained in Exhibit No. 35, is that correct?

A. Yes, sir.

Mr. TAYLOR: Thank you. That is all I have.

Mr. WHEAT: Have you offered Exhibit 36?

Mr. TAYLOR: Not yet.

843 Mr. WHEAT: I see. I would like to ask some questions preliminary to that.

Exam. WAY: All right.

Cross Examination—Continued.

Q. (By Mr. WHEAT) Mr. Lang, why didn't you bring any other standing instructions you may have had from members of P. C. W. A. relating to routing to show P. C. W. A. as consignee?

A. Why didn't I bring more?

Q. Yes.

A. I thought that taking a cross-section of the accounts, as I had, was a pretty good representation.

Q. How are we to know that you took a cross-section of the accounts? I am not complaining that you didn't, but I want to know how it is that you happened to bring these particular letters and not all the letters which relate to the handling of shipments with P. C. W. A. members. That is all I am asking you.

Exam. WAY: Let me ask you this, which may clear it up. Were these letters submitted as a part of the file of the shipments in Exhibit No. 35?

The WITNESS: Yes, sir.

Exam. WAY: And they relate to those shipments, is that so?

The WITNESS: Relate either to those shipments or to those accounts. We have had these files tied up with these shipping orders, and that is why I kept them together when I brought them down.

844 Mr. WHEAT: Mr. Examiner, there are a great many letters involved here. We have, of course, had no opportunity to go over them and we ought to have at least an opportunity to go over them. I don't believe that we will have any objection, but it is a very voluminous exhibit.

Exam. WAY: All right. Ruling on Exhibit 36 is deferred.

Mr. WHEAT: I wonder if we can have the same ruling on Exhibit 37. We haven't had a chance to see what these documents are.

Mr. TAYLOR: May we have a recess for fifteen minutes?

Mr. WHEAT: We will have to have a recess of more than fifteen minutes to check these, Mr. Taylor. I think we should have a reasonable opportunity.

Exam. WAY: We will suspend the receiving of these two exhibits until tomorrow morning.

Mr. WHEAT: Thank you, sir.

Mr. TAYLOR: That is all I have, Mr. Lange.

Exam. WAY: Will you be here in the morning, Mr. Lange?

The WITNESS: Yes, sir.

Exam. WAY: We may have some more cross examination. We will recess for ten minutes.

(Short recess.)

Exam. WAY: On the record.

All right, Mr. Wheat, you may continue with Mr. Lange.

845 Q. (By Mr. WHEAT) Mr. Lange, I have looked over the various letters, which are contained as part of Exhibit 36 for identification, and I note that you have in no instance included any letter of so-called standing instructions from these members of Pacific Coast Wholesalers' Association. You do have such letters from the members, do you not?

A. Yes, sir.

Q. And they are similar, are they not, to the letters that are included in Exhibit No. 33 to the Blackhawk Manufacturing Company, such as the one I now hand you from the Ballou & Wright Company?

A. Yes, sir.

Q. So that if you had desired, or had not had time to do it, or thought it was essential, you could have included among the letters of Exhibit 36 these letters of standing instructions from each member of P. C. W. A.?

A. Yes, sir.

Q. Now, considering, with respect to Exhibit 35, those shipments that we were talking about a while ago headed, "Petroleum Oil," could it possibly have been, Mr. Lange, that there was a misdescription of the commodity and that it might have been held to be "Carbon Removing Compound," and so charged by the carriers?

A. No, sir.

Q. You don't believe that is possible?

A. No, sir.

846 Q. You have had instances of slips of that nature, have you not, by your billing clerks or your traffic clerks?

A. None has ever been brought to my attention.

Q. You don't know that?

A. No, sir.

Q. I thought possibly that that might have been it. Do you ship carbon removing compounds?

A. Yes, sir. We have had a description given to us by the carriers under "Oil, NOIBN" on that particular commodity, and that is the commodity that we have been using. But it is a new commodity, which has just been shipped in the past few months, and I don't think in any instance are any of the documents used here, freight bills or any others, which cover that commodity.

Q. In what way did you get these instructions—by letter?

A. No. We took it up with them direct, had them calling in the office frequently, and took it up with them there.

Q. With whom did you take this up and when was that done and what was the tariff reference?

A. I couldn't quote you that offhand.

Q. We would like to be able to check this, Mr. Lange. If we could we would like to get that data. Did you do the taking up with somebody of this problem?

A. Yes, sir.

Q. Well, what was his name?

847 A. Well, it was taken up with the local carriers.

Q. Tell us what you did.

A. That is what I am doing, sir.

Q. Yes.

A. I can't tell you offhand. It has been some time ago. I couldn't tell you which particular man at the time I talked to him in the office, whether it was the rate clerk or the office man.

Q. Someone in Racine?

A. Yes, sir.

Q. And someone told you that this material should be so designated?

A. That is right.

Q. And do you now so designate it on your bills of lading?

A. That is right.

Q. Now, I would like to ask you about Exhibit 37—

Exam. WAY: (Interposing) Before you ask him about that, let me ask you, Mr. Lange, did you have any objection to the introduction of Exhibit No. 37 which purports to be your confidential price list?

The WITNESS: No, sir.

Q. (By Mr. Wheat) I would like to ask you with respect to that whether these price lists, shown in the various documents which make up Exhibit 37, are the prices to which you have testified previously which include freight allowance?

848 A. Yes, sir. The purpose of the price lists was just to bear out the freight terms. The prices there really have nothing to do with it at all.

Q. Nothing to do?

A. Nothing to do so far as I can see it as far as information with it at all. They are merely to bear out the freight terms indicated on each of those price lists.

Q. Where are the freight terms indicated on these price lists?

A. Each price list has it indicated in a different place, but it is always under, "Delivery terms".

Q. In other words, where I see, in one instance, "Delivery f.o.b. cars at factory," that would be the item, would it?

A. That is right.

Q. So far as you are concerned that is the sole purpose of these price lists?

A. That is right.

Mr. WHEAT: We have no objection to either of the Exhibits 36 or 37, Mr. Examiner.

Exam. WAY: They are received.

(Commission's Exhibits Nos. 36 and 37, Witness Lange, were received in evidence.)

Exam. WAY: You are excused.

Mr. AMES: I have just one question.

Exam. WAY: Just a moment, Mr. Lange.

Q. (By Mr. AMES) Mr. Lange, do certain of your

849 customers, like the Salt Lake Hardware Company and Piston Service, Inc., in sending their orders to you, indicate the person to whom they in turn sold the material and instruct you to ship direct to them? Have you received any general instructions from them to that effect?

A. Without referring to the files, I couldn't say offhand, no, sir.

Q. Let me approach it another way. Maybe it is my fault. How would you be able to identify a customer of Piston Service, Inc. in order to know whether to ship a P. C. W. A. or a regular forwarder? How would you identify a customer of theirs?

A. From the purchase order received from our customer.

Q. From the Piston Service, Inc.?

A. Yes, sir.

Q. Then, it is true, is it not, as is evidenced in some of these purchase orders in Exhibit 35, that they do, when they don't want the stuff consigned directly to themselves, that they indicate their customer on their purchase order to you?

A. Yes, sir.

Q. Now, as I understand you, you have taken the position that you shouldn't be required to ship P. C. W. A. to anyone except the members themselves? You have taken that position?

A. Yes, sir.

Q. Do you still take that position?

A. Yes, sir.

850 Q. And it is true, is it not, that you have been in correspondence with those members of P. C. W. A. and that they have been urging you not to take that position?

A. Yes, sir.

Q. Now, on the trucking company that you employ to handle the business from Racine, Wisconsin, into Chicago, have you in the past reserved the right to select the particular truckmen whom you hire?

A. Yes, sir.

Q. Are you doing it today?

A. Yes, sir.

Q. Do you identify, as a part of your Exhibit 36, two letters from the P. C. W. A., purported to be signed by W. A. Nourse, N-o-u-r-s-e, dated April 11th and April 25th, 1946?

A. Yes, sir.

Q. In those letters, did the P. C. W. A. undertake to tell you which carrier to employ from Racine to Chicago?

A. Yes, sir.

Q. Who was that carrier?

A. Keeshin Motor Express.

Q. Why did they tell you to employ Keeshin?

A. Because of a cheaper rate that their customer would be benefited by.

Q. And those instructions came direct to you from the P. C. W. A.?

A. Yes, sir.

851 Q. I ask you to identify, also as a part of your Exhibit 36, letters to you from the Salt Lake Hardware Company, dated August 20, 1946, and from the Piston

Service, Inc., dated March 4, 1946, in which they explain to you that on some shipments you had not used P. C. W. A. service in dealing with their customers.

A. Yes, sir.

Q. Those are two such letters?

A. Yes, sir.

Q. I ask you to identify a letter from Pacific Coast Wholesalers' Association under date of February 13, 1946, and state whether that is a part of Exhibit 36 of record in this proceeding?

A. Yes, sir.

Q. What is the basis of that letter, and what—

Mr. WHEAT: (Interposing) Now, if it is a part of the exhibit, Mr. Examiner,—

Mr. AMES: (Interposing) I have got to lay a foundation for this question, Mr. Examiner.

Exam. WAY: Go ahead and ask it.

Q. (By Mr. AMES) What is the request made upon you by that letter?

A. The information as to their freight bill No. CLA-1678-54 of December 14th, on which their charges were not paid.

Q. Is that a shipment upon which they billed you direct?

852 A. Yes, sir.

Q. As I understand it, your usual practice is to let the consignee pay and then you reimburse them?

A. That is right.

Q. Now, how did it happen that on this particular shipment that P. C. W. A. is after you for an undercharge? Did they bill you direct on that?

A. Yes, sir.

Q. What are the circumstances of that?

A. Shipment was made to the Supply Officer on Terminal Island—

Q. Just a moment, Mr. Lange. Would you repeat that, please?

A. The shipment was made by us for the account of one of the members, I don't have the information written on this freight bill, but directly to the Supply Officer at Terminal Island, California.

Q. Directly to the Supply Officer of the new receiving station at Terminal Island, California.

A. Yes, sir.

Q. And the P. C. W. A. rendered you a freight bill dated December 14, 1945, under their reference number CLA-1678-54?

A. Yes, sir.

Q. How did you happen to prepay that shipment?

A. Shipments made to the government agencies on commercial bills of lading must be shipped prepaid.

Q. How did the P. C. W. A. happen to get into it?

853 A. The order was received from one of their members, and we were directed on that purchase order to ship via Pacific Coast Wholesalers' Association.

Q. Was that prior to the time when you changed your policy in that respect?

A. Yes, sir.

Mr. AMES: Do you want to stipulate that the Supply Officer there of Terminal Island, California, is not a member?

Mr. WHEAT: Oh, certainly.

Mr. AMES: Thank you. That is all I have been able to gather in this short time, Mr. Examiner, but I think that is enough.

Mr. WHEAT: In that regard, Mr. Examiner, I think possibly if I may be allowed to ask one or two more questions I will clear up the point.

Exam. WAY: Proceed. Go ahead.

Q. (By Mr. WHEAT) In connection with the two letters Mr. Ames referred to you about, dated April 11, 1946, and April 25, 1946, signed by Mr. Nourse, District Manager of the Pacific Coast Wholesalers' Association, you answered a question by Mr. Ames to the effect that these were instructions to you to ship in a certain way. As a matter of fact, they are requests, are they not? They said they would appreciate it if you would do that.

A. I think it depends on how you would read their

854 letters, Mr. Wheat.

Q. Don't they say, "Please do it," in effect?

Mr. AMES: Mr. Examiner,—

Mr. WHEAT: (Interposing) I have a right to ask him this question in view of the fact that he stated he received these instructions.

Mr. AMES: I have a right to make an objection, Mr. Wheat, uninterrupted. These letters are in evidence, Mr. Examiner, and whether they constitute a request or a direction, I think, is a matter for the Commission to determine from the language employed.

Exam. WAY: Objection sustained.

Q. (By Mr. WHEAT) I ask you, Mr. Lange, do you have standing instructions from the members of P. C. W. A., mentioned in these two letters, specifying particular routing?

A. You mean originating carriers?
Q. Yes, sir.
A. To Chicago?
Q. Yes.
A. I believe I have, yes, sir.
Q. And, in effect, didn't P. C. W. A. write you and ask you why you were not complying with those instructions and request that you do so?
A. Will you repeat that question, please?
Exam. WAY: Read it.
855 (Question read.)
The WITNESS: Yes, sir.
Q. (By Mr. WHEAT) Now, when you answered Mr. Ames and spoke about having received instructions from customers of P. C. W. A., was that not a slip of the tongue and did you not mean members of P. C. W. A.?
A. Yes, sir.
Mr. WHEAT: Thank you. That is all.
Exam. WAY: Anything further?
(No response.)
You are excused.
(Witness excused.)
Exam. WAY: We will recess for a few minutes until we find out where those exhibits are.
(Short recess.)
Exam. WAY: On the record.
Mr. TAYLOR: Mr. McFarland.

CHARLES P. MCPARLAND was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your name?
A. Charles P. McParland.
Q. You are Mr. Charles P. McFarland, traffic manager of Automotive Maintenance Machinery Company, North Chicago, Illinois?
A. The name is McParland, spelled with a "P."
856 Q. M-c-P-a-r-l-a-n-d?
A. Yes, sir.
Mr. WHEAT: I didn't get the name of the company, Mr. Taylor.
Mr. TAYLOR: Automotive Maintenance Machinery Company, Mr. Wheat.
Mr. WHEAT: Thank you.
Q. (By Mr. TAYLOR) How long have you been employed as traffic manager of your concern, Mr. McParland?

A. About twelve years.

Q. Is your concern a member of the Pacific Coast Wholesalers' Association?

A. No, sir.

Q. Has it ever been a member of that Association?

A. No, sir.

Q. Does your concern ship its merchandise using the facilities of Pacific Coast Wholesalers' Association?

A. It does.

Q. To customers located on the West Coast?

A. That is right.

Mr. TAYLOR: Mark for identification Exhibit No. 38, which consists of photostatic copies of uniform bills of lading prepared by Automotive Maintenance Machinery Company, North Chicago, Illinois, during the year 1946, and photostatic copies of invoices, copies of Pacific
857 Coast Wholesalers' Association freight bills, and other documents in connection with the shipments identified in recap sheets Nos. 1 and 2 attached to this exhibit.

(The documents referred to were marked as Commission's Exhibit No. 38, Witness McParland, for identification.)

Q. (By Mr. TAYLOR) As traffic manager of your concern, Mr. McParland, are you familiar with the shipping documents contained in this exhibit?

A. Yes, I am.

Q. Will you please relate the circumstances which occasioned your first use of Pacific Coast Wholesalers' Association services and relate, briefly, the method employed by your concern in starting these shipments to the West Coast?

A. At the request of our customers on the West Coast, which was transmitted to us in letter form, we prepared the shipments at North Chicago, and we used the truck lines operating out of North Chicago to deliver the merchandise to the Pacific Coast Wholesalers' terminal at Chicago, and they, in turn, transported it to the West Coast.

Q. Is the Colyear Motor Sales Company, with principal office located at Los Angeles, the principal consignee of your shipments?

A. It is one of the consignees.

Mr. TAYLOR: Mark for identification, please, as No. 39, four photostatic documents, the top one headed.
858 "Colyear Motor Sales Company," and the third

document headed, "Featherstone's Inc., Los Angeles."

(The documents referred to were marked as Commission's Exhibit No. 39, Witness McParland, for identification.)

Q. (By Mr. Taylor) I will ask you, Mr. McParland, if the photostats herein contained are copies of the originals in your files?

A. Yes, these are copies prepared by us from the original letters.

Q. And are these letters connected with the shipping papers identified in Exhibit No. 38?

A. Yes, they are.

Q. Were your shipments, that is, those contained in Exhibit No. 38, made on a prepared or on a collect basis?

A. Made on a collect basis.

Q. And were the freight charges later assumed by your concern in the settlement, that is, the invoice settlements, with the consignees named therein?

A. Yes, they were.

Q. And in all instances?

A. I couldn't say in all instances that they were.

Q. But, as a general practice—

A. As a general practice they are.

Q. They are assumed?

A. That is right.

859 Q. Are any parts, or, I should say, proportions of those freight charges, refunded to your concern?

A. No.

Q. Is it customary for your concern, in the selling and shipping of similar merchandise to other concerns, to absorb the freight charges?

A. Yes, in some instances.

Q. Depending upon the contract, I assume?

A. That is right.

Q. Now, will you take the first shipment in Exhibit No. 38 and follow that shipment through with respect to the various photostatic documents pertaining thereto in order that the record may show your method of accounting and handling, beginning with the bill of lading?

A. The shipment was made from North Chicago on the 9th day of January, 1946, to Piston Service, Inc., at Seattle, Washington. It was for three cartons of electric tools weighing 170 pounds.

Q. And what does the routing indicate?

A. P. C. W. A.

Q. That is to say, that bill of lading was tendered to the P. C. W. A. warehouse in Chicago?

A. No. The bill of lading was tendered to Webber Cartage at North Chicago for delivery to the P. C. W. A. terminal in Chicago.

Q. Is Webber Cartage your truck line or is it a truck line in contract relationship with P. C. W. A.?

860 A. It is a cartage line that we use for transporting our shipments into the various terminals in Chicago.

Mr. WHEAT: May I suggest, Mr. Taylor, that it might be of interest there, if you look on Exhibit 39, that in both instances they mention the Webber Cartage Company. I don't know whether that had been called to your attention.

Mr. TAYLOR: In connection with this bill of lading, the particular shipment referred to it is noted, in connection with your statement, Mr. Wheat, that Exhibit 39, to which you are referring, referring to the Colyear Motor Sales Company letter, dated April 24, 1945, does not indicate, so far as I see from my examination, that it refers to Piston Service Inc. at Seattle.

Am I correct in my observation?

Mr. WHEAT: The letter of instruction, I suppose, should have had attached to it a document which was probably sent to the Automotive Maintenance Machinery Company at the same time of these letters, which is the form of bill of lading which was similar to one attached to one of the exhibits, Exhibit 27.

Mr. TAYLOR: It is noted that this is a general letter of instruction from Colyear Motor Sales Company which, in the first paragraph reads: "In the future please forward all our less-than-carload freight shipments (of 20 pounds or more) to our stores in California, Oregon, Washington and Arizona," etc. But I do not see where that letter of

861 instruction covers instructions to Piston Service, Inc. to Seattle.

Mr. WHEAT: I am not talking about that, of course, Mr. Taylor. I wanted to mention that Webber Cartage Line is mentioned on there, and I thought that might assist you in your examination.

Mr. TAYLOR: I don't know whether that would apply to this particular shipment or not, Mr. Wheat.

Q. (By Mr. TAYLOR) I will ask the witness, in connection therewith, whether or not Webber Cartage Line does all the hauling of these shipments which are routed through P. C. W. A.?

A. No, they don't.

Q. What other cartage lines handle to the Transport Terminal warehouse?

A. Cushman Motor Freight and Krema Trucking.

Q. Are they employed by your concern for pick-up services, or are they associated with P. C. W. A., if you know?

A. That I don't know.

Q. Do you call these particular trucking lines, or any particular one, or are you in each instance directed to turn this freight over to a certain line by P. C. W. A.?

A. We were at one time directed to use Webber Cartage and, later, in some correspondence, we were directed to use either Cushman or Keeshin.

Q. Now, if you will continue, please, with the continuity of the movement started out of Chicago on January
862 9, 1946, bringing your next comment to the next document in the file pertinent thereto?

A. The next document is our invoice billing Piston Service at Seattle, Washington, for the merchandise we had shipped on the bill of lading No. 4284.

Q. Do you know whether Piston Service, Inc., is a member of P. C. W. A.?

A. I don't know.

Q. Will you go on to the original, that is, the photostatic copy of the original freight bill, issued by the Pacific Coast Wholesalers' Association covering this particular shipment?

A. There is no freight bill in the exhibit covering this shipment.

Q. How do you account for the fact that you have no freight bill to cover the bill of lading?

A. We couldn't locate any in our file.

Q. Do you know whether you ever received a freight bill covering this shipment?

A. I couldn't say.

Q. Do you have a document in your possession, which is a part of this exhibit, which will show that your concern ultimately assumed or absorbed the freight charges for this particular shipment?

A. No, I haven't.

Q. Going next to the bill of lading, shipper's No.
863 4286, also dated January 9, 1946, at North Chicago, consigned to Colyear Motor Sales Company, Los Angeles, covering three cartons, weight 143 pounds, will

you advise whether or not that shipment moved collect or prepaid?

A. It moved collect.

Q. Referring to the freight bill covering that particular shipment, will you advise whether or not that freight bill, dated January 21, 1946, on No. CLA 1710-5, in rate of $2.40 extension $3.43, represents a charge which is in conformity with the freight forwarders tariffs, if you know?

A. I couldn't say for sure.

Q. Can you say with respect to this shipment whether or not your firm absorbed the freight charge which was paid in this instance by Colyear Motor Sales Company, the shipment having been billed on a collect basis?

A. Yes. The freight bill presented to our company by Colyear Motor Sales for the amount of $3.53 was assumed by us.

Q. And that $3.53 assumed by you includes, does it not, $3.43 in freight charges and an additional item of 10 cents, making a total of $3.53, the 10 cent charge in the rate column being identified as a result of what appears the figure "3 per cent", is that correct?

A. Yes, that was assumed by us.

Q. In other words, your firm absorbed the freight charges and the tax?

864 A. That is correct.

Q. In its entirety?

A. That is correct.

Q. And is that the method employed generally in the handling of the transactions of your concern with Colyear Motor Sales Company?

A. Yes.

Q. And you received no percentage of that entire charge back in the final transaction with Colyear Motor Sales Company?

A. No, not to my knowledge.

Q. In other words, your concern pays the freight charges plus the government tax which that 3 per cent represents? You pay that in its entirety, is that correct?

Mr. WHEAT: I want to object to that question. It is a leading question of the first water, and, I think we have had so many leading questions that perhaps we have overlooked that particular principle. This question assumes a fact not in evidence as well as being leading.

Exam. WAY: Do you know what the 3 per cent represents?

The WITNESS: No. I assume it is a tax.

Exam. WAY: The objection is sustained as to what the 3 per cent is for because the bill doesn't state. The witness says he doesn't know.

Q. (By Mr. TAYLOR) Do you know whether it is customary for the railroads, or freight forwarding com-
865 panies, to assess a 3 per cent, that is, 3 cents on each dollar on the total freight charges against those shipments?

A. Yes, they do.

Q. And, in your transactions with the railroads and other freight forwarders, if you have such other transactions, is it customary for you to pay the 3 per cent federal tax?

A. That is correct, it has.

Q. Has your firm ever filed any claims for loss or damage with the Pacific Coast Wholesalers' Association?

A. No, we haven't.

Mr. TAYLOR: I believe that is all.

Exam. WAY: You may cross examine.

Cross Examination.

Q. (By Mr. WHEAT) Mr. McParland, do you have any other connection with the Pacific Coast Wholesalers' Association other than having received instructions to name that organization as consignee?

A. No, sir.

Q. Is it a fact that your only arrangement, in connection with any of these transactions, is with your customer who is a member of the Pacific Coast Wholesalers' Association?

A. That is correct, other than Pacific Coast Wholesalers' Association at times asks us to use certain truck lines to come into Chicago.

Q. Yes. On behalf of their members?

866 A. That is right.

Q. Yes. Now, in connection with Exhibit No. 39 for identification, I note that Colyear Motor Sales Company and Featherstone's Inc., have both instructed you to mark all packages, "Pacific Coast Wholesalers' Association," with that Wells Street address in Chicago, and then for themselves, is that correct?

A. That is right.

Q. And there was attached to each of those original letters a sample, a suggested bill of lading, was there not, showing Pacific Coast Wholesalers' Association as the consignee, and then these two companies, respectively, on these two letters, as sub-consignees?

A. Yes, there was.

Q. Then, in connection with your own bill of lading where I notice you have used a somewhat different method, was it your purpose to follow those instructions?

A. Yes, we tried to follow them.

Q. So that as a matter of fact, it was your purpose, was it, to name P. C. W. A. as a consignee with Piston Service or Colyear or Featherstone's or whatever member of P. C. W. A. you were dealing with as sub-consignees?

A. Our purpose was in sending the shipment to Chicago by truck line to be delivered to the P. C. W. A. for transportation to our customer.

867 Q. Yes. And you were attempting to follow the instructions you had received from your customers?

A. That is right.

Q. And you understood those customers to be members of the Pacific Coast Wholesalers' Association, did you not?

A. That is correct.

Mr. WHEAT: No further questions.

Q. (By Mr. AMES) Why didn't you name the P. C. W. A. as consignee on that bill of lading, which is shipper's No. 4286? Whom did you name as consignee there?

A. Colyear Motor Sales at Los Angeles, California.

Q. Who did you name as originating motor carrier?

A. Webber Cartage.

Q. Who did you name as the transporter after the word, "Route," to carry it beyond?

A. P. C. W. A.

Q. You didn't name P. C. W. A. as consignee in that shipment at all, did you?

A. No.

Q. So your answers to Mr. Wheat meant what you said you did are contrary to this bill of lading that I handed you that you did not name P. C. W. A. as consignee?

A. No.

Q. All right, let us go over them. I showed you one. I will show you some more. Here is No. 4286—

868 Mr. WHEAT: I will stipulate that he didn't do that in any case. That is why I asked him those questions.

Mr. AMES: You will stipulate that he did ask P. C. W. A.? I thought your questions indicated that he had indicated that he had not.

Mr. WHEAT: No. My questions followed that he did not name P. C. W. A. as the consignee as per instructions.

Mr. AMES: I didn't know that that was the purpose of your questions, and I hardly think anybody else did. But

if you will stipulate that he did not name P. C. W. A. as consignee to Chicago that serves my purpose.

Mr. WHEAT: Sure. It appears on the face of the document.

Mr. AMES: That is why I wondered why you asked the question.

Q. (By Mr. AMES) Your instructions from the Colyear Motor Sales Company, exception No. 2, as I read them—and I may be wrong—say, "If weight of all the following articles to be shipped is 100 pounds or more, they are to be shipped via Universal Carloading & Distributing Company," and it shows "Electric tools, NOIBN."

Now, this bill of lading I called to your attention, first, has a shipment of electric tools, NOIBN, which weigh 143 pounds, Why didn't that go via Universal?

A. Apparently whoever wrote the bill of lading overlooked the instructions at that time.

869 Q. Did you get any instructions from Colyear subsequent to April 24, 1945, by virtue of which they changed that Exception No. 2, or is this the last instruction you have had from them?

A. That was the last instruction I had in my files.

Q. When you want to indicate a carrier by whom you desire a shipment transported, you put it into the bill of lading after the word, "Route," don't you?

A. That is right.

Q. And all these bills of lading, that I have had occasion to examine, have indicated opposite the word "Route" the designation, "P. C. W. A."?

A. That is right.

Mr. AMES: That is all I have, Mr. Examiner. Thank you.

Exam. WAY: You are excused.

(Witness excused.)

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Mr. TAYLOR: Exhibit No. 38 is offered in evidence.

Mr. WHEAT: No objection.

Exam. WAY: Received.

(Commission's Exhibit No. 38, Witness McParland, was received in evidence.)

Mr. TAYLOR: Exhibit No. 39 is offered in evidence.

870 Mr. WHEAT: No objection.

Exam. WAY: Also received.

(Commission's Exhibit No. 39, Witness McParland, was received in evidence.)

Exam. WAY: We will take a short recess.

(Short recess.)

Exam. WAY: On the record.

Call your next witness.

Mr. TAYLOR: Is anybody appearing here from John A. Roebling's Sons Company?

Mr. DICKSON: I am.

Mr. TAYLOR: Will you come up here and be sworn?

R. J. DICKSON, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your name, please, sir?

A. R. J. Dickson, D-i-c-k-s-o-n.

Mr. AMES: Pardon me. Would you spell that name again, please?

The WITNESS: D-i-c-k-s-o-n.

Q. (By Mr. TAYLOR) Mr. Dickson, are you employed by the John A. Roebling's Sons Company, Chicago?

A. I am.

Q. What is your position?

A. Assistant treasurer.

871 Q. And how long have you been employed in that position?

A. Six years.

Q. As such, do you also come into contact with traffic matters and are you acquainted with shipping documents of your concern?

A. Not completely, but in a supervisory capacity. I don't see them all.

Q. Is your concern a member of Pacific Coast Wholesalers' Association?

A. We are not.

Q. Has it ever been a member?

A. No.

Q. Does it make shipments via the services of P. C. W. A.?

A. In one instance only.

Q. And that is?

A. That is to a customer of ours at Salt Lake City.

Q. What customer is that?

A. That is The Galigher Machinery Company.

Mr. TAYLOR: Mark for identification Commission's Exhibit No. 40 consisting of numerous photostatic copies of bills of lading under print of John A. Roebling's Sons Company, together with accompanying purchase orders and invoices of John A. Roebling's Sons Company, and at the bottom of such exhibit, in addition to the foregoing describ-

ed photostats, are photostatic copies of two letters,
872 namely, one, under the heading of "The Galigher Company," dated October 24, 1944, dated at Salt Lake City, Utah, to John A. Roebling's Sons Company, signed "The Galigher Company by H. H. Barraclough"; and, No. 2, identified under print as filed with the initials "D. M. R." dated November 9, 1944, file A-749, the letter being written under the print of "John A. Roebling's Sons Company, E. T. Weart, Branch Manager," addressed to "The Galigher Company, Salt Lake City, Utah."

(The documents referred to were marked as Commission's Exhibit No. 40, Witness Dickson, for identification.)

Q. (By Mr. TAYLOR) Mr. Dickson, handing you Exhibit No. 40, I will ask you to identify the bill of lading, that is, with respect to the dates, and so on and so forth.

A. The bill of lading covers a shipment of 4860 pounds consigned to the Pacific Coast Wholesalers' Association at Chicago under our No. 41127.

Q. You are referring now to the top billing, the top photostat, that is in the exhibit?

A. The top photostat in the exhibit. That is No. 8847, which is the number of the bill of lading.

Q. What does that merchandise consist of?

A. That merchandise consists of three reels of steel wire rope.

Q. And the weight?

A. The weight is 4860 pounds gross.

873 Q. And to whom is that consigned?

A. That is consigned to the Pacific Coast Wholesalers' Association at Chicago, and the sub-consignee is the Galigher Company.

Q. Where?

A. They don't say. I beg your pardon, Salt Lake City.

Q. And you turned that shipment over to the P. C. W. A. warehouse in Chicago?

A. Correct.

Q. The Transport Terminal Warehouse, if you know?

A. I don't know what the name of the warehouse is.

Q. But you did turn that merchandise over to P. C. W. A. at Chicago for shipment to Salt Lake City?

A. Correct.

Q. Will you please state whether or not that bill of lading shows the shipment to move on a prepaid basis?

A. This does not. Yes, this moved on a prepaid basis.

Q. Who wrote that word "Prepaid" in the column which in print on the bill of lading form says, "If charges are to be prepaid, write or stamp here, 'to be prepaid'"?

A. The Roebling's shipping clerk.

Q. That is, the shipping clerk of your concern wrote that in?

A. Right.

Q. Did that shipment move on a prepaid basis?

A. It did.

874 Q. Upon further reference to your file, as contained in Exhibit No. 40, will you please produce in evidence the copy of paid freight bill covering?

A. I do not have that as a part of the file.

Q. Was a copy of the prepaid freight bill ever presented to your concern?

A. I can only assume that it was, not having a copy here. All shipments that move to this agent on a consigned basis are prepaid. That is a standing instruction got from the customer.

Q. Then you believe that it is just merely an omission that you did not include for the Commission's hearing here the freight bill covering that bill of lading?

A. That is correct.

Q. You believe you do have a copy of the paid freight bill in your possession?

A. Yes, I believe that we do.

Q. Now, did your concern ship to this customer at Salt Lake, in all instances, on a prepaid basis?

A. Well, all shipments that are sent to their consigned stock are on a prepaid basis unless there is an error committed and it is sent collect.

Q. Referring again to this Exhibit No. 40, will you please examine it and point out for the Examiner a shipment wherein you have in your possession the copy of the paid freight bill?

875 A. Well, I must assume that we have copies of prepaid freight bills on any of these shipments that were made "Prepaid."

Q. Were you requested by the Commission's representative, Mr. Koch, to furnish the originals of those freight bills for photostating?

A. If we were we misinterpreted the instruction. That was not listed in the material that we have in this letter, the letter of transmittal.

Mr. WHEAT: Is the letter of transmittal attached to this?

I don't see it. Possibly I might have a chance to look at the letter of transmittal.

Might we have this colloquy on the record, Mr. Examiner?

Exam. WAY: Have what?

Mr. WHEAT: This colloquy between the witness and counsel on the record.

Mr. TAYLOR: There has been no colloquy if you please, Mr. Wheat.

At this point, I should like to state for the record that we have made an examination of Exhibit No. 40 and I am very much surprised to find that we do not have included copies, that is to say, photostatic copies, of the paid freight bills in connection with this exhibit. Now, if it is necessary that we do have I will ask the Examiner if he will please ask the witness if we can have copies of paid freight bills covering all bills of lading contained in this exhibit.

876 Exam. WAY: Can you do that?

The WITNESS: Yes, sir.

Exam. WAY: Do it within ten days.

The WITNESS: Yes, sir.

Exam. WAY: Mail it to the Secretary of the Commission at Washington, D. C., with a copy to Mr. Wheat and Mr. Ames.

The WITNESS: How many copies?

Exam. WAY: Well, there will be four copies altogether, including one for the Secretary.

Mr. TAYLOR: Five, if you please.

Exam. WAY: Yes, five. Also mail a copy to Mr. Taylor.

The WITNESS: All right.

Q. (By Mr. TAYLOR) Going on to the next shipment represented by bill of lading No. 7552, dated March 4, 1946, will you please state to whom that shipment was addressed?

A. That is consigned to the Pacific Coast Wholesalers' Association for The Galigher Company, Salt Lake City, Utah.

Q. And what did the merchandise consist of?

A. The merchandise consisted of two bags of fittings, weight 377 pounds.

Q. And is that bill of lading No. 5060?

A. That is bill of lading No. 5060.

Q. Can you tell by examination of the bill of lading whether or not that shipment moved prepaid or collect?

A. That shipment moved collect, although it was
877 supposed to have been prepaid from the mark on the customer's order.

Q. But the bill of lading itself gives no evidence that the shipment moved on a prepaid basis, is that correct?

A. That is correct.

Q. And I understand that you will furnish the Commission with copies of the freight bills, whether prepaid or collect, on each of these bills of lading contained in this exhibit?

A. I will furnish freight bills on prepaid shipments. On collect shipments we would have no bills because the freight would be allowed on the face of the invoice.

Q. Would you examine this exhibit, which I feel you can do rapidly inasmuch as there are only a half dozen bills contained in it, and advise whether or not each shipment moved on a prepaid basis?

A. Shall I name these as I go through them?

Q. No, just examine them.

A. Bill of lading—

Q. No, you don't have to do that. Go to the third bill of lading contained in the exhibit, bill of lading No. 5424, dated April 1, 1946, to the same concern at Salt Lake. Will you please state what that freight consisted of?

A. The shipment consisted of two reels of steel wire rope weighing 2359 pounds and one package of wire rope fittings weighing 25 pounds. This was not prepaid.

Q. Can you state why that shipment was not prepaid?

878 A. Yes. Well, I will have to correct myself on that. Wire rope shipped on consignment to an agent is prepaid, fittings are not, so you have two different items here. They fall under different classifications, but this should have been prepaid according to our practice.

Q. Then the two reels, weighing 2359 pounds, should have been prepaid but actually went on a collect basis?

A. From this bill of lading, yes.

Q. Can you, by referring to the document next under, or to other documents in your possession, state whether or not an adjustment was ever made to the shipper allowing the freight charges?

A. Not on that particular one.

Q. So, as far as you know, that shipment went on through on a collect basis and it remained that way and its status so remains today?

A. I feel so, yes.

Q. Going on to the next bill of lading, No. 8285, dated September 12th, I assume that is 1946, although the year does not appear—

A. Yes, that is it.

Q. (Continuing)—will you state to whom that shipment was consigned?

A. This was consigned to Pacific Coast Wholesalers' Association and marked for The Galigher Company,
879 Salt Lake City, Utah, and consisted of one real of steel wire rope, weight 2437 pounds, prepaid.

Q. Can you furnish a copy of the freight bill on that shipment?

A. Yes.

Q. Going on to bill of lading No. 5975, dated May 4, 1946,—

A. (Interrupting) That shipment was consigned to the Pacific Coast Wholesalers' Association marked for The Galigher Company, Salt Lake City, Utah, and consisted of one box of fittings, weight 354 pounds, and one bundle of fittings, weight 47 pounds. This shipment was not prepaid.

Q. Is that a type of merchandise which you described as not being subject to prepayment by your concern?

A. That is correct. The freight was allowed on the face of the invoice.

Mr. TAYLOR: I believe that is all the bills of lading contained in this exhibit, Mr. Examiner.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Now, the only remaining question I have is this. In connection with these shipments which you did prepay, and concerning which you will furnish us photostatic copies of the freight bill, was that the final status of the freight accounts, that is to say, that your company paid these prepay charges and no part of that was ever charged back against the customer, or no part of it was given
880 to a member of the Pacific Coast Wholesalers' Association, if you know?

A. Not to my knowledge or our records.

Mr. TAYLOR: Thank you. That is all.

Mr. WHEAT: Have you completed your direct examination?

Mr. TAYLOR: Yes, I am through.

Cross Examination.

Q. (By Mr. WHEAT) Mr. Dickson, is your arrangement, with respect to all of these shipments indicated by documents contained in Exhibit 40 for identification, solely with The Galigher Company at Salt Lake City rather than with the Pacific Coast Wholesalers' Association?

A. Yes. Our arrangement consists of following the request of The Galigher Company in the form of a letter asking us to route shipments to them by P. C. W. A., and that was dated October 24, 1944, I believe, and we have followed their request.

Q. In all of these instances?

A. In all of these instances. There may have been cases where we erred and shipped some other way, but there are not many.

Q. And, I take it, that is your desire and intention, that is to say, to follow those instructions of a member of the Pacific Coast Wholesalers' Association?

A. It is.

Q. So, then, there is no other arrangement which you have with Pacific Coast Wholesalers' Association as such?

A. None whatsoever.

881 Q. Do you ship materials, such as are shown on these various documents, to all parts of the country with freight included in the price, as it was here?

A. We do.

Mr. WHEAT: That is all.

Mr. AMES: Nothing.

Exam. WAY: You are excused, sir.

(Witness excused.)

Exam. WAY: Does anyone else have anything to offer?

Mr. WHEAT: Do I understand that the Commission's counsel has concluded?

Exam. WAY: I am asking him.

Mr. TAYLOR: Yes, I am through. Thank you, Mr. Dickson.

Mr. WHEAT: I thought you said you had six witnesses.

Mr. TAYLOR: This exhibit is offered in evidence, Exhibit No. 40.

Mr. WHEAT: No objection.

Exam. WAY: It is received.

(Commission's Exhibit No. 40, Witness Dickson, was received in evidence.)

Exam. WAY: If there is nothing further, the hearing will stand adjourned to meet again at the Federal Court House at 9:30 a. m. on February 11th at Los Angeles, California. There being nothing further, this hearing is closed.

(Whereupon, at 5:10 p. m., an adjournment was taken until 9:30 a. m., Tuesday, February 11, 1947, at the Federal Court House, Los Angeles, California.)

882 Before the Interstate Commerce Commission

Ex parte Docket No. 160.

In the Matter
of
PACIFIC COAST WHOLESALERS' ASSOCIATION
Investigation of Status.

Room 706, State Building,
Los Angeles, California,
Tuesday, February 11, 1947.

Met pursuant to adjournment, at 9:30 a. m.

Before: LEONARD WAY, Examiner.

APPEARANCES:

(As heretofore noted.)

884 PROCEEDINGS

Exam. WAY: The Interstate Commerce Commission has set for hearing before me at this time and place adjourned hearing *ex parte* 160, Pacific Coast Wholesalers' Association, investigation of status.

Are there any additional appearances? If you have already entered your appearance, you do not need to enter it again.

Are you ready to proceed, Mr. Taylor?

Mr. TAYLOR: Calling Mr. H. B. Anderson.

H. B. ANDERSON, was re-called and testified further as follows:

Direct Examination.

Exam. WAY: You have already been sworn.

Q. (By Mr. TAYLOR) Mr. Anderson, you are employed with the Interstate Commerce Commission, are you not?

A. I am.

Q. What is your official position?

A. District supervisor, Bureau of Water Carriers and Freight Forwarders, headquarters, 823 Monadnock Building, San Francisco, California. In this proceeding I am acting as a special agent for the Commission.

Q. Have you, during the past several days, called at the general offices of Pacific Coast Wholesalers' Association in Los Angeles for the purpose of developing additional information considered pertinent to this hearing?

885 A. I have.

Q. Did you examine records there with a view of completing the transportation history of representative

shipments contained in certain exhibits received in evidence at the Commission's hearings in Philadelphia, Cleveland and Chicago?

A. I did.

Q. Did you arrange for the photostating of those documentary records?

A. I did.

Q. Handing you Exhibits Nos. 23, 29, 30, 31 and 35, received in evidence, will you please identify the related documents to be marked for identification?

A. With respect to Exhibit No. 23, and P. C. W. A. freight bill Number CSL 869-4, dated June 7, 1946, for a shipment from Yale & Towne Manufacturing Company to Salt Lake Hardware Company, of four cases pulley blocks or chains, weight 1,000 pounds, I present Baltimore and Ohio Railroad Company uniform straight bill of lading, dated June 1, 1946, for carload of merchandise.

Exam. WAY: That is sufficient identification.

The WITNESS: You don't want the car number?

Exam. WAY: Go ahead with the other documents, if you like, but that is sufficient for this one sheet.

The WITNESS: In car ATSF 7156.

Q. (By Mr. TAYLOR) From where and to where, Mr. Anderson?

886 A. For shipment from Chicago, Illinois, to Seattle, Washington, copy of Union Pacific Railroad freight bill Number 29178, with total charges of $902.75; also copy of the Pennsylvania Railroad Company freight bill, dated May 25, 1946, covering waybill number 705449; also copy of Pacific Coast Wholesalers' Association check number 5571, dated July 29, 1946, payable to the Salt Lake Hardware Company, amount, $27.61; and a copy of letter from P. C. W. A. to H. H. Ellsworth, T. M., The Salt Lake Hardware Co., dated July 29, 1946, transmitting this check for savings on their shipments handled in the month of June, 1946.

Exam. WAY: The documents will be marked Exhibit No. 41 for identification.

(The documents referred to were marked Commission's Exhibit No. 41, Witness Anderson, for identification.)

Mr. GORDON: In the interests of saving time, if the Examiner please, I think that all of these exhibits which the witness is in the process of identifying have been examined by us, and I am willing to stipulate that they may be received into evidence without further identification.

Exam. WAY: Exhibit 41 will be received.

(Commission's Exhibit No. 41, Witness Anderson, was received in evidence.)

The WITNESS: With respect to Exhibit No. 29, and P. C. W. A. freight bill CSF 1040-3, dated January
887 17, 1946, I offer photostatic copy of Summit Fast Freight, Inc., freight bill number 26250 N, dated December 28, 1945, for shipment from Massillon, Ohio, to Chicago, Illinois; also Santa Fe freight bill number 4528, dated January 25, 1946, for carload of freight from Chicago, Illinois to San Francisco, California, in which the shipment covered by the freight bill of Summit Fast Freight, Inc., was included.

This is offered as Exhibit No. 42.

Exam. WAY: It will be received.

(Commission's Exhibit No. 42, Witness Anderson, was received in evidence.)

The WITNESS: With respect to Exhibit No. 30, P. C. W. A. freight bill CSL 934-1, dated August 29, 1946, the following is offered:

Photostatic copy of The Liberty Highway Company, freight bill number 90396, dated August 21, 1946; also a copy of Baltimore and Ohio Railroad bill of lading for car AT&SF number 7873, bill of lading dated August 23, 1946; also a copy of Union Pacific Railroad freight bill number 45425, dated Seattle, Washington, September 5, 1946. The total charges, $823.07.

This is offered as Exhibit No. 43.

Exam. WAY: It will be received.

(Commission's Exhibit No. 43, Witness Anderson, was received in evidence.)

The WITNESS: Also with respect to Exhibit No. 30,
888 P. C. W. A. freight bill CSL 970-4, dated October 29, 1946, the following is offered:

Photostatic copy of New York Central Railroad freight bill Pro. number 65407, dated September 30, 1946, for shipment from Cleveland, Ohio to Chicago, Illinois; with Baltimore and Ohio bill of lading covering Southern Pacific car number 64950, billed from Chicago, Illinois, October 3, 1946, to Seattle, Washington, with Union Pacific Railroad freight bill number 54052, dated Seattle, Washington, October 16, 1946, with copy of P. C. W. A. check number 6216, dated November 29, 1946, payable to Strevell-Paterson Hardware Company, amount, $264.25, and copy of letter from P. C. W. A. to Mr. E. L. Evans, traffic manager, Strevell-

Paterson Hardware Company, dated November 29, 1946, with which was transmitted the check number 6216, covering savings on shipments handled in the month of October, 1946, in the amount of $264.25.

This is offered as Exhibit No. 44.

Exam. WAY: It is received.

(Commission's Exhibit No. 44, Witness Anderson, was received in evidence.)

The WITNESS: And further with respect to Exhibit No. 30, P. C. W. A. freight bill, CSF 1174-2, dated August 1, 1946, the following is offered:

Copy of The Liberty Highway Company freight bill number 84843, dated July 16, 1946, for shipment 14 car-
889 tons of pipe fittings from Cleveland, Ohio to Chicago, Illinois, weight 754 pounds; also copy of Baltimore and Ohio Railroad bill of lading, covering New York Central car number 208128, billed from Chicago, Illinois, July 24, 1946, consigned to P. C. W. A., San Francisco, California, with copy of the Western Pacific Railroad Company freight bill number 2031, dated August 16, 1946, also with Western Pacific Railroad Company freight bill number 2022, dated August 16, 1946, covering charges for a stop-over on this car enroute, together with P. C. W. A. check number 5695, dated August 31, 1946, payable to Colyear Motor Sales Company, amount, $2,091.59, with copy of letter from P. C. W. A. to Mr. E. J. Jensen, vice president, Colyear Motor Sales Company, dated August 31, 1946, transmitting this check as covering savings on shipments handled in July, 1946.

This is offered as Exhibit No. 45.

Exam. WAY: It is received.

(Commission's Exhibit No. 45, Witness Anderson, was received in evidence.)

The WITNESS: With respect to Exhibit No. 31 P. C. W. A. freight bill number CSL 949-5, dated September 16, 1946, the following is offered:

Copy of Decatur Cartage Company, Inc., original freight bill number CLE 564457, dated September 5, 1946, cover-
ing shipment from Cleveland, Ohio to Chicago, Illi-
890 nois, with copy of The Baltimore and Ohio Railroad bill of lading covering Pennsylvania car number 75907, billed from Chicago, Illinois, September 10, 1946, to P. C. W. A., Seattle, Washington, with copy of Union Pacific Railroad freight bill number 48287, dated September 19, 1946, with copy of record of savings on all shipments han-

dled by P. C. W. A. for the Motor Mercantile Strevell-Paterson, during the month of September, 1946. The savings on the shipment covered by P. C. W. A. freight bill CSL 949-5 are included on this statement, and this statement is typical of all such statements prepared by P. C. W. A. for its members, covering savings for each month in which they had shipments.

Also attached with these papers is copy of P. C. W. A. check number 6044, dated October 30, 1946, payable to Strevell-Paterson Hardware Company, amount, $271.69, and copy of letter from P. C. W. A. to Mr. E. L. Evans, traffic manager, Strevell-Paterson Hardware Company, dated October 30, 1946, transmitting check number 6044, covering savings on 171 shipments, weight 104,732 pounds, which were handled during the month of September, 1946.

This is offered as Exhibit No. 46.

Exam. WAY: Received.

(Commission's Exhibit No. 46, Witness Anderson, was received in evidence.)

891 The WITNESS: With respect to Exhibit No. 35, and uniform straight bill of lading from Service Company, Agent's No. 4119-9, dated at Racine, Wisconsin, June 17, 1946, for a shipment from Ajax Auto Parts Company—

Exam. WAY: Pardon me just a minute, please.

Are those attachments for this exhibit?

The WITNESS: This is to support it. It is a freight bill that was not in there originally.

Exam. WAY: You are not offering anything, then, except the freight bill?

The WITNESS: Just the freight bill.

Exam. WAY: All right.

The WITNESS: Covering a shipment consigned to Fey & Krause, Inc., Los Angeles, California, of 25 cartons jacks, not wheeled, weight, 2325 pounds, is offered copy of P. C. W. A. freight bill No. CLA 1866-27, dated June 26, 1946, showing collect charges, $64.18, is offered as Exhibit No. 47.

Exam. WAY: Received.

(Commission's Exhibit No. 47, Witness Anderson, was received in evidence.)

Q. (By Mr. TAYLOR) Mr. Anderson, at the office of Mr. Olson did you prepare, or request Mr. Olson's office to prepare an exhibit showing a recapitulation of all part lot shipments handled for P. C. W. A. members during the month of December, 1944, and other subsequent and

892 representative months?

A. I had from Mr. Olson's—strike that, please.

I did prepare, from Mr. Olson's records, with Mr. Olson's assistance, a statement showing the total number of shipments billed in the month of December, 1944, and in the month of December, 1945, which shows the total number of shipments billed in those months, separated between the total number billed collect and the total billed pre-paid, with the weight of the shipments for each member for the month, savings paid to member for shipments handled during the month, P. C. W. A. check number and date of check on which the savings were paid to the members.

This statement shows the name of each member, with the address of their principal office.

Statement for the month of December, 1944, shipments, shows that during that month 4,272 shipments were handled, 3,844 of which were collect, and 428 were pre-paid.

Statement showing shipments for the month of December, 1945, shows that during this month 3,885 shipments were handled, 3,509 of which were collected and 377 pre-paid.

Mr. TAYLOR: May we mark this statement for identification at this time?

Exam. WAY: It will be marked Exhibit No. 48.

(The statement referred to was marked as Commission's Exhibit No. 48, Witness Anderson, for identification.)

Mr. AMES: May I ask a question at this point, Mr. 893? Examiner?

Mr. Anderson, does Exhibit 48 list all of the members of P. C. W. A., or only those members who might have had some pre-paid shipments?

The WITNESS: This shows those that had pre-paid shipments during the months, as shown on the statements.

Mr. AMES: Have you made an examination on your own behalf to determine whether all of the members received pre-paid shipments?

The WITNESS: I did not for each month, but I did check to determine that during these two months every member received one or more pre-paid shipments.

Mr. AMES: Thank you, sir.

Q. (By Mr. TAYLOR) Mr. Anderson, with respect to the December, 1944 statement—

The WITNESS: Just a minute.

Will you read my statement?

(The record was read.)

The WITNESS: I would like to correct the previous answer, that every member except one received a pre-paid shipment, one or more pre-paid shipments during those months.

Q. (By Mr. TAYLOR) Does that statement show some pre-paid shipments transported for the account of each member?

A. It does, in addition to which there is one that is not a member.

Mr. AMES: Which one is that?

894 The WITNESS: United States Maritime Commission.

Mr. TAYLOR: I will get to that in just a minute, Mr. Ames, please.

Q. (By Mr. TAYLOR) In connection with the pre-paid shipments shown on that statement, does that mean that the charges are pre-paid by a member consignee, or does it mean that the charges were pre-paid by a non-member consignor, if you know?

A. By a non-member consignor.

Q. Then those shipments, if you know, represent in the entirety shipments made via P. C. W. A., in which a non-member paid the freight charge, is that correct.

A. That is correct.

Q. In connection with collect shipments, do Mr. Olson's records reflect whether or not such charges on any of the accounts were ultimately absorbed by non-member consignors due to freight allowance sales transactions?

The WITNESS: Would you read that, please?

(The question was read.)

The WITNESS: The records show that these freight charges were paid by the consignors who are not members of the Association.

Mr. TAYLOR: I believe, Mr. Anderson, you got the question confused.

Will you read the question again, please?

(The question was read.)

895 The WITNESS: They show that the charges were absorbed by consignors.

Mr. TAYLOR: Off the record.

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

The WITNESS: They do not.

Exam. WAY: Now let me see if I understand that answer. In certain instances you have shipments which are billed collect?

The WITNESS: That's right.

Exam. WAY: They are delivered to the consignee, but in certain of those instances the charges are deducted from the invoice, is that what you mean?

Mr. TAYLOR: That is correct. We assume, in view of the proceedings heretofore held at Philadelphia, Cleveland and Chicago, that there are perhaps a goodly number of these so-called "collect" shipments appearing in the column related by Mr. Anderson, which ultimately revert to charges, freight charges assumed by the consignor. However, the records of the member consignee, and those records alone, probably will show that to be either so or not.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Are all of the names appearing on the December, 1944, recapitulation statement, and
896 subsequent months, those of P. C. W. A. membership?

A. As stated, there is one shown on the December, 1944 shipments, which is not a member, that of the United States Maritime Commission, Los Angeles, California.

Q. Have you made inquiry as to whether or not the United States Maritime Commission was ever a member of Pacific Coast Wholesalers' Association?

A. My information, obtained from Mr. Olson's office, is that they are not a member, but there was some kind of an understanding with respect to that membership in connection with California Shipbuilding Corporation, but I am not fully advised about that, and would prefer that that be answered by Mr. Olson or an officer of P. C. W. A.

Q. You speak of the California Shipbuilding Corporation. Are they a member of P. C. W. A.?

A. They were a member of P. C. W. A.

Q. During the same time that these shipments were billed to the United States Maritime Commission?

A. They were a member from approximately November, 1942, through 1945.

Q. During what period of time did the United States Maritime Commission receive shipments via the services of P. C. W. A.?

A. From December, 1942, through December, 1945. A great majorty of the shipments ceased in September, 1945.

However, there were a few, I would say three or four
897 shipments, received during the months of October, November and December, 1945.

Exam. WAY: Those were the shipments to the Maritime Commission?

The WITNESS: Those were shipments to the United States Maritime Commission on government bills of lading, on which the Maritime Commission paid the freight charges.

Q. (By Mr. TAYLOR) Did you, in the office of Mr. Olson, prepare, or did you request Mr. Olson's office to prepare an accounting sheet showing the present status of the United States Maritime Commission fund, if any?

A. I did. I have a statement which was prepared from records of P. C. W. A., showing status of United States Maritime Commission account on February 6, 1947. This shows—

Exam. WAY: Do you want to introduce that as an exhibit?

The WITNESS: Yes, sir.

Mr. TAYLOR: Mark for identification the statement Mr. Anderson is testifying to.

Exam. WAY: It will be marked Exhibit No. 49.

(The statement referred to was marked as Commission's Exhibit No. 49, Witness Anderson, for identification.)

The WITNESS: This statement shows that P. C. W. A., on February 6, 1947, was holding savings applicable to November and December, 1944, of $4,634.13; for the year 1945, $9,798.96, and funds deducted and credited to the revolving fund during 1944 of $6,674.09, and funds
898 credited to the revolving fund during 1945 of $1,466.21, and funds were held during 1942, credited to undercharge reserve account, $16.63.

Exam. WAY: All of the figures are on there, Mr. Anderson. You don't need to give us those figures.

The WITNESS: Yes. Well, funds for the undercharge reserve account during the years 1942, '43, '44 and '45, of $1,628.58, making a total being held of $24,201.97.

I was informed that this amount was being held to protect an estimated tax liability of $15,509.62, and claims in the amount of $4,000.00, and unpaid freight charges in the amount of $4,532.69, or a total of $24,042.31.

This statement also shows by months during 1944 and 1945, the savings applicable to each month.

Exam. WAY: You say, Mr. Anderson, that you were informed. Who informed you?

The WITNESS: Mr. G. A. Olson.

This is offered as Exhibit No. 49.

Exam. WAY: It will be marked Exhibit No. 49 for identification.

Q. (By Mr. TAYLOR) Mr. Anderson, what other exhibits did you and Mr. Olson prepare?

A. At my request, information was obtained from each member by correspondence, showing the name of each member, the address of their principal office, together with the address of each branch store they operate,

899 Exam. WAY: It will be marked Exhibit 50.

(The document referred to was marked as Commission's Exhibit No. 50, Witness Anderson, for identification.)

The WITNESS: With the areas served by each store, the articles handled by each store, such as automotive parts, restaurant equipment, hardware, mine and mill industrial machinery, *et cetera*, also the kind of business of each firm, that is, whether wholesale or retail, and, in both, the percentage of each to the total.

This statement, under the name of member, location of head office, and branches, shows the name of each member of the Association as of February 10, 1947. There are now 38 members of the Association, as shown on this statement.

Mr. TAYLOR: This is offered as Exhibit No. 50.

Mr. GORDON: No objection.

Exam. WAY: Is there any objection to 48 or 49?

Mr. GORDON: None.

Exam. WAY: 48, 49 and 50 are received in evidence.

(Commission's Exhibits Nos. 48, 49, and 50, Witness Anderson, were received in evidence.)

Q. (By Mr. TAYLOR) Mr. Anderson, did you prepare any other exhibit for this hearing?

A. I obtained copies of paper prints of two stamps which were prepared or ordered by P. C. W. A. to be furnished to their members, which are used in stamping their

900 purchase orders, to show how or to whom the material is to be shipped.

Q. Am I to understand, Mr. Anderson, that these stamps are supplied by Mr. Olson's office, as general manager of the Association, to the membership, for use of the membership in their transactions with their customers?

A. They are.

Q. Or with their manufacturers, if you know?

A. They are. The first one shows shipped to Pacific Coast Wholesalers' Association, 3710 South California Avenue, Chicago, Illinois, "According to standing instructions".

The other stamp shows the same information, except, in addition, it shows, "Sub-Mark—For:". This is used principally when a member desires certain goods shipped to one of its customers, instead of being shipped direct to the member.

Q. What else did you prepare in the offices of P. C. W. A.?

Mr. GORDON: There is no objection to this last document, if you desire to offer that in evidence.

The WITNESS: This is offered as Exhibit No. 51.

Exam. WAY: Received.

(Commission's Exhibit No. 51, Witness Anderson, was received in evidence.)

Mr. TAYLOR: Off the record a minute.

Exam. WAY: Off the record.

(Discussion off the record.)

901 Exam. WAY: On the record.

Q. (By Mr. TAYLOR) Mr. Anderson, did you obtain an up-to-date membership list from Mr. Olson's office, showing the present members?

A. I did. That is reflected on Exhibit No. 50.

Mr. TAYLOR: Thank you.

I believe that is all for now, Mr. Anderson.

Exam. WAY: Cross examine.

Mr. GORDON: Do you have any question, Mr. Ames?

Mr. AMES: Yes, I have some, Mr. Gordon.

Mr. GORDON: I was going to request that if there is going to be cross examination, it may be deferred, in order that some of the member witnesses may give their testimony, and leave. They are quite busy men, and it would be an accommodation if their testimony could be taken before we conclude the cross examination of Mr. Anderson.

Mr. AMES: That is satisfactory to me.

Exam. WAY: Is there any objection?

Mr. TAYLOR: No objection.

Exam. WAY: All right. We will proceed with the members.

(Witness temporarily excused.)

Mr. TAYLOR: Calling Mr. Vinson.

902 J. O. VINSON was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) How do you spell the name, please, sir.

A. V-i-n-s-o-n. The initials are J. O.

Q. Mr. Vinson, are you an official of Fey & Krause, Incorporated, of Los Angeles?

A. I am. I am secretary of the corporation.

Q. And as such are you familiar with the sales and shipping transactions of your firm?

A. I am.

Q. Is your principal office in Los Angeles?

A. Yes.

Q. Does your concern have branch stores?

A. No, none.

Q. Your firm is a member of Pacific Coast Wholesalers' Association?

A. It is.

Q. Since what date, please?

A. Since its organization, whenever that was.

Exam. WAY: Ever since the organization of the P. C. W. A.?

The WITNESS: Ever since we were one of the charter members of the outfit.

Q. (By Mr. TAYLOR) And the purpose is to obtain the benefit of carload freight rates by consolidating ship-

903 ments at Chicago with merchandise of fellow members?

A. That's right.

Q. Do the part lot shipments consigned to your firm move mostly on a collect basis or on a pre-pay basis?

A. Mostly on a collect basis.

Q. That is to say the shipments come into Los Angeles from Chicago, and Mr. Olson's office presents you with individual freight bills covering each part lot shipment, which you pay?

A. That is correct.

Q. Are those payments made by your firm on the basis of freight forwarding company rates, if you know?

A. As far as I know, yes.

Q. And thereafter Mr. Olson's office makes refunds to you which represent the savings resulting from the application of carload rates?

A. That's correct.

Q. In connection with these collect shipments, do some of them represent merchandise which was sold by the consignor manufacturer on a delivery or a destination f. o. b. basis?

A. Yes.

Q. And in such instances your firm makes invoice or credit memorandum adjustments by billing the consignor for the freight charges thus paid?

A. That's correct.

Q. That would then in fact convert those ship-
904 ments to a freight allowance basis, would it not?

A. Yes.

Q. What approximate percentage of your total, so-called "collect" shipments would you say are later adjusted and charged against the consignor?

A. I couldn't give you a percentage on it, but I would say a very small percentage.

Q. Would you say as much as 10 per cent?

A. Would you predicate that on the number of shipments or on the value of the shipments, or how would you want it based?

Q. The question is the number of individual shipping transactions with Mr. Olson's office, for instance.

A. I question seriously if it would run 10 per cent on a freight allowed basis.

Q. Would it run approximately, say 5 per cent?

A. It possibly could.

Q. Has that been a more or less continuity of volume since your shipments began to move via P. C. W. A. services? In other words, has it been more or less constant during the past several years?

A. Yes.

Q. Does your concern also receive shipments wherein the consignor actually prepays the freight charges at the time he tenders them to the originating carrier or the P. C. W. A. warehouse in Chicago?

A. Occosionally, yes.

905 Q. What are the names of those concerns who usually handle transactions in that method?

A. Well, I can give one offhand. I would have to take a look at the records for any further than that. The Electric Company of—I believe it is Cincinnati, Ohio, prepays shipments.

Exam. Way: Does it prepay them all the way through, or just to Chicago?

The WITNESS: No, they prepay them all the way through, sir. May I amplify that, for your information? They make that shipment collect to P. C. W. A. in Chicago, and P. C. W. A. in Chicago bills the shipper for the total charges through.

Q. (By Mr. TAYLOR) And your firm does not bear any portion of those freight charges, is that correct?

A. In that event, no.

Exam. WAY: Pardon me just a minute. I would like to get this clear in my mind.

On the so-called "prepaid shipments" by the Steam Electric Company, insofar as the rail carriers are concerned, they are billed collect, but as to the P. C. W. A., they are prepaid, are they not? In other words, they are billed collect. The amount of the money is collected and is paid to the shipper. Is that what you meant?-

The WITNESS: From us? No, sir. What I meant
906 was that interim haul between the shipper's place of business and the consolidating point in Chicago is collect to Chicago. At that point P. C. W. A. then bills the shipper for the through charges to us, plus the advance charges, and makes their collection for their transportation from the other end of the line.

Exam. WAY: And the collection is made from the consignor?

The WITNESS: That's right, sir.

Exam. WAY: All right. Thank you.

Q. (By Mr. TAYLOR) You cannot recall any other shippers in the east, that is, consignors, who prepay shipments to you?

A. As I say, there are very few. I can't recall any others.

Q. What would you estimate the total volume of prepaid shipments to be? You have already stated the approximate volume of collect which were freight allowed.

A. Well, it would have to be the balance of it, and I think you determined the figure for me there. It would have to be the balance of the shipments would be prepaid. I told you—

Q. No. I am speaking of the freight prepaid by the consignor, or freight allowance shipments. I am not speaking of the greater volume of shipments which come on a collect basis, and they remain at that status throughout the invoice transaction.

A. I do not wish to be argumentative about this,
907 but when you asked me the original question, I told you that I hadn't any definite idea at all. You finally

pinned me down, I think, to 5 per cent—or 95 per cent, and the balance of it would be the other.

Q. Referring to Commission's Exhibit No. 35, Ajax Auto Parts Company uniform bill of lading, dated June 17, 1946, further identified in the upper right-hand corner as Agent's No. 4119, Mr. Vinson, does that cover a shipment of 25 jacks, weight, 2,325 pounds, billed to your concern in Los Angeles, routing P. C. W. A.?

A. Yes, it does. That is 25 cartons of jacks, rather.

Q. And, referring to Exhibit No. 47, a copy of P. C. W. A. freight bill No. CLA 1866-27, dated June 26, 1946, does that freight bill in the total amount of $4.18 represent the shipment referred to in the bill of lading?

A. Yes, it does.

Q. Does it indicate also that your concern, Fey & Krause, paid the freight charges on that shipment?

A. We did pay them. There is no indication to that effect on anything I see here, but we did pay that amount of charges.

Q. You assume that by the fact that the freight bill shows collect, is that correct?

A. That's correct.

Q. Under the bill of lading referred to, please note photostatic copy of Ajax Auto Parts Company invoice,
908 dated June 25, 1946, as indicated on the left-hand margin, showing jacks shipped to Fey & Krause. I will ask you if the reference thereon, less freight allowed on 2,325 pounds at $2.76 per hundred weight, total charges in the extension column, $64.17, represents the freight charges paid by you as indicated in P. C. W. A. freight bill 1866-27 of June 26, 1946?

A. It does.

Q. Does that invoice settlement account indicate that your concern billed the freight charges back against the consignor in this instance?

A. No.

Q. What does it indicate, then?

A. They were purchased on an f. o. b. destination basis, and the shipper made a freight allowance to cover the transportation. There was never any question of a debit against the account ever arose, because the allowance was on the invoice itself.

Q. So Fey & Krause did not make a debit memorandum to the consignor in this case, but, on the other hand, the Ajax Auto Parts Company, as indicated by this invoice,

automatically allowed the freight charges in its invoice settlements to you, is that correct?

A. Yes.

Q. And they did absorb the freight charges on this particular transaction?

A. That's correct.

909 Q. Thank you, sir.

Did your concern also have additional transactions with the Ajax Auto Parts Company in a similar manner as this, Mr. Vinson?

A. As I recall it, yes. They are a regular source of supply for us.

Q. And have been for the past several years?

A. Well, there is a gap in there of some three years, with which I am not familiar, because I was in the Army, but, prior to that and subsequent to my return, yes.

Q. Is this method of transaction common to your general relationships with manufacturers or distributors in the east, that is, where you buy on an f. o. b. basis, and you pay the freight charges, you, in those instances, do get credit adjustments with the consignors?

A. No, it is not a common occurrence at all, because very few of our sources of supply in the east either make freight allowances or pre-pay shipments.

Q. But you do have other manufacturers in the east who do ship some merchandise to you on this same basis?

A. Yes, the same small percentage we were discussing a while ago.

Mr. Taylor: Thank you. That is all.

Exam. Way: Cross examine.

910 Cross Examination.

Q. (By Mr. Ames) Mr. Vinson, I noticed from Exhibit 50, which has been introduced, that your company does business in southern California and southwestern Nevada, is that correct?

A. That's right, yes, sir.

Q. Do you have cases where you make shipments direct to your customers from points in the east, or do they all come through you first?

A. We have very rare instances of that. I can't remember any occasion, because practically every one of our shipments are distributed through our own head office here.

Q. They come to you first, and then you send them to these places in southern California.

A. That's right.

Q. If you did have a shipment that went direct to one of your customers, and he paid the freight charges, would you claim the savings through P. C. W. A. on that shipment?

A. I am afraid I couldn't answer that one without some discussion with Mr. Olson. I would have to call up and find out whether I could have those savings or not.

Q. You have never had occasion to—

A. Never had occasion to use it, as far as I can remember.

Q. —to make inquiry on that sort of a shipment?

A. No, sir.

911 Q. From whom in the east do you secure the major portion of your tonnage, by weight now, not by number of shipments? Do you have anybody that supplies the bulk of your output?

A. Not any one particular supplier.

Mr. GORDON: Now, just a moment, please. I don't want to exclude any relevant evidence, but it appears to me that that question is wholly irrelevant and immaterial. It might be a matter of some concern—

Exam. WAY: Well, he has already answered that he doesn't have any, so it doesn't make any difference.

Mr. AMES: I did not get the answer.

(The record was read.)

Q. (By Mr. AMES) I have no intention of inquiring into your private business matters.

A. I am not attempting to be evasive at all, sir.

Q. You testified on direct that so far as the percentage of actual shipments is concerned, that it would probably run around 5 per cent where freight was allowed to you, and you based that percentage, as I understood, on the number of shipments received. I was wondering whether you could make a similar calculation on the tonnage. What percentage of tonnage does that happen on?

A. I couldn't hazard a guess. I have never attempted to break it down on that basis.

Q. Well, Exhibit 48, introduced here, shows that in the month of December, 1945, out of 18 shipments, you
912 had 73 prepaid, and in December, 1944, out of 20 shipments, you had none prepaid, so your experience, I take it, in the matter of prepaid shipments is a little spotty. You will have quite a few one month, and some months you won't have any.

A. That could be true.

Q. Mr. Taylor asked you a question about Exhibit 47, and I want to make clear that we are all talking about the

same thing. He mentioned a freight rate of $2.76, but he mentioned a total charge of $64.17. That is the same transaction that is covered by Exhibit 47, even though the freight charge on Exhibit 47 is indicated at 286 cents, isn't it? That is the same deal?

A. I would say so, yes.

Q. In other words, the $2.76 rate is an overall computation, including the 3 per cent item, too?

A. That's right, sir.

Q. Apparently. You say that is right?

A. Yes.

Mr. AMES: That is all I have.

Cross Examination.

Q. (By Mr. GORDON) Mr. Vinson, in the instances where there has been a freight allowance by your supplier in the east, that was a part of your terms of purchase of the articles, was it not?

A. That is correct, yes.

913 Q. And that is true regardless of whether the shipment moved on a so-called "prepaid" or a collect basis, is it not?

A. It would be in our instance, because where a shipper allows the transaction, we can only request a routing, but we can't insist on it. He can ship it any way he wants to, as long as he lays it into our store, so that where a shipper allows the freight, as I said, we couldn't presume to give him the medium by which he shall ship it to us.

Q. In any event, where a freight allowance is concerned, it is a part of the terms of purchase?

A. That's right.

Q. It is part of the deduction from the purchase price, isn't that right?

A. Yes.

Q. Just the same as a discount. I mean, it is of the same general character, in other words—

A. Well, in that it tends to equalize the ultimate billed price of the merchandise, yes.

Mr. GORDON: That is all I have. Thank you.

Exam. WAY: You are excused, sir.

(Witness excused.)

Mr. AMES: May we have a recess, Mr. Examiner?

Exam. WAY: Yes. Recess for five minutes.

(Short recess taken.)

Exam. WAY: All right, Mr. Taylor, call your next witness, please.

914 Mr. TAYLOR: Calling Mr. Lambert.

IRA LAMBERT was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your full name, please, sir?

A. Ira Lambert.

Q. Of Lambert and Company?

A. Yes, sir.

Q. Los Angeles?

A. Yes, sir.

Q. What is your position with that company, sir?

A. President of the company.

Q. As such, are you familiar with the sales and shipping transactions of your concern?

A. More or less, on that.

Q. Your general office and plant is located at Los Angeles, is it not?

A. Yes, sir.

Q. Do you have any branch stores located on the west coast?

A. One at 145 South La Brea.

Q. In Los Angeles?

A. Yes, sir.

Q. And your firm is a member of the P. C. W. A.?

A. Yes, sir.

Q. And has been since when?

915 A. A good many years. I don't know. Since it started, I think. I know it was—since it started.

Q. And you became a member for the purpose of obtaining the benefit of carload freight rates by consolidating part lot shipments at Chicago, and merchandise of fellow members?

A. Yes, sir.

Q. Do the part lot shipments consigned to your firm by eastern manufacturers or distributors move mostly on a collect or a prepaid basis?

A. We get them both ways. I don't know how it stands. Some is collect, and some is prepaid.

Q. In connection with the collect shipments, does Mr. Olson's office, as general manager, present you with individual freight bills covering each part lot shipment?

A. Yes, sir.

Q. Which your firm pays on the rate basis, as published by the regulated freight forwarding companies?

A. I think that is the rate that they charge us. We pay the bill, and they send it in.

Q. You pay your bills currently, then?

A. Yes.

Q. And thereafter does Mr. Olson's office make refunds to you which represent the savings resulting from the application of carload rates?

A. Yes, sir.

916 Q. In connection with these collect shipments, do some of them represent merchandise which was sold by the consignor manufacturer on a delivery or a destination f. o. b. basis?

A. Yes, sir.

Q. And in such instances does your firm make invoice for credit memoranda adjustments by billing the consignor for the freight charges paid?

A. Yes, sir.

Q. Which convert the shipments to a freight allowance basis?

A. Well, I guess you would call it freight allowance—the stuff is f. o. b. Los Angeles. I don't know whether you would call it a freight allowance, but we get money back for what we pay out.

Q. Are many of your purchase accounts handled in this manner?

A. All of them, that is, either prepaid or—

Q. Or freight allowance?

A. Yes, sir.

Exam. WAY: Read that last answer, please.

(The record was read.)

Exam. WAY: Wait a minute. You say that you receive your freight billed collect, but it is still on a freight allowance basis, is that it?

The WITNESS: Yes, f. o. b. Los Angeles.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) Perhaps I have not made
917 myself clear, Mr. Lambert.

Referring to Commission's Exhibit No. 48, at page 2, which shows the total number of shipments billed in December, 1944, as 128, does it not, for Lambert and Company?

A. That is true. This forwarding company here, I suppose.

Q. Through the P. C. W. A.?

A. Yes.

Q. And out of that 128, doesn't it show 105 shipments on a collect basis, and 23 on a prepaid basis?

A. Your sheet shows that, but I don't know what it would be.

Q. Do I understand you to mean that in connection with the collect shipments, that is to say, the shipments which Mr. Olson's office tendered you freight bills on, and which you paid, did the consignor ultimately pay those charges, which you bill back to him in all instances, or did you in some of those instances pay those freight charges and charge them against your own account?

A. Yes, some was that way, too. Some lines and some accounts credited on the invoice make your freight allowance in this territory.

Q. May I ask you in this way, please.

Generally speaking, what percentage of the freight charges which you pay here on the collect shipments are charged back against the consignor?

A. I couldn't give you that.

918 Q. Would you say approximately 50 per cent?

A. I wouldn't know what amount would be on that at all.

Q. You wouldn't care to give any approximate percentage, or can you say?

A. No, I would be only guessing if I did, because we don't have it broke down like that in the office.

Q. Is it quite substantial, would you say?

A. Well, I just don't know how much it would be, unless I would check up on it to see how it was handled.

Q. Referring to Commission's Exhibit No. 32, which consists of a recapitulation sheet— I should say two sheets— which relate to a good number of shipments contained in this exhibit, and which exhibit also contains photostatic copies of P. C. W. A. freight bills, bills of lading, and debit memorandum, *et cetera*, may I call your attention, please, to the top freight bill of P. C. W. A., No. CLA 1975-13 dated October 12, 1946, which shows as shipper Almetal Joint Unit, Cleveland, Ohio—I believe that should be the Almetal Universal Joint Company, Cleveland, Ohio, consignee Lambert Company, Los Angeles, does that freight bill show one box of joints, *et cetera*, 12 bales of joints, 17 cartons, ditto, total weight 2,617 pounds, rate, $3.52, freight charges, $92.12, 3 per cent thereunder, extension $2.76, and totaling $94.88, is that correct?

A. Yes, sir.

919 Q. Does that freight bill indicate that the merchandise moved on a collect basis, and that the $94.88 was paid by yourselves?

A. Yes, sir.

Mr. AMES: Could we have the number of that freight bill, please?

Mr. TAYLOR: CLA 1975-13, dated October 12, 1946.

Q. (By Mr. TAYLOR) Attached to the freight bill, I refer you to bill of lading, which appears to be dated October 1, 1946—it is quite dim—and will ask you if the merchandise on that bill of lading, which was issued by the Almetal Universal Joint Company of Cleveland, is companion to the freight bill just identified, that is to say, does it cover the same shipment?

A. Yes, it does, all right, because it reads the same way; weights, and all, the same.

Q. And, attached thereto, I refer you please, to Lambert Company, Ltd., debit memo dated October 19, 1946, addressed to Almetal Joint Company, Cleveland, Ohio, and will ask you if that memo does not charge back to the consignor, Almetal Joint Company, the charges of $94.88, which, on the face of the memo, shows it covers freight bill No. CLA 1975-13, October 12, 1946?

A. Yes, sir.

Q. And that debit memo is numbered M 3973, is it not?

920 A. Yes, sir.

Q. Which indicates, that so far as this particular shipment as concerned, although it was billed collect, and you, as a member of P. C. W. A., paid the freight charges, you did, in the final analysis, bill those charges back against the consignor for payment?

A. Yes, sir.

Q. And they did pay you?

A. I suppose they did. They should have, yes. Here is a credit for it, here (indicating).

Q. I will now refer you to the next attached document in the exhibit, dated October 22, 1946, CM No. 807, and will ask you if that is not evidence, as credit memorandum, of the payment by Almetal Universal Joint Company to your concern of those freight charges, $94.88?

A. Yes, sir.

Q. Now I will ask you, please, sir, to review the balance of the exhibit, and refer to additional copies of P. C. W. A. freight bills, which were on a collect basis, and to the debit memorandum of your concern, and will ask you if those other freight bills contained in the exhibit, on which your firm paid the charges, were ultimately billed against the consignor shipper?

A. That there has been billed (indicating). This one there has been billed (indicating).

921 Q. What is your statement, please, sir?

A. I say there have been two debit memos on this one here, so it don't match up with your charge on this one.

Mr. TAYLOR: Off the record a moment, please.

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Q. (By Mr. TAYLOR) Have you examined the exhibit, Mr. Lambert?

A. Yes.

Q. And what is your answer?

A. What is it you want to know, whether these are—

Mr. TAYLOR: Read the question, please.

(The question was read.)

The WITNESS: All but one here, I don't see no debit memo.

Q. (By Mr. TAYLOR) What exception do you note? With respect to what freight bill number? Does it appear to be P. C. W. A. freight bill No. OSL 939-20, dated September 3, 1946?

A. Yes. I don't see no charge on that one.

Mr. AMES: What is the date on that?

Mr. TAYLOR: September 3, 1946.

Q. (By Mr. TAYLOR) You failed to find a credit memorandum attached thereto, which would indicate that in that particular instance the Lambert Company charged back the freight charges to Almetal?

A. I don't see any debit memo where they were

922 charged back. They should have been.

Q. Is it your opinion that this shipment also was handled as the others were?

A. Yes, sir.

Q. And that probably it is an inadvertence that the credit or debit memo is not contained therewith?

A. That's right.

Q. Then would it be your statement, Mr. Lambert, that in connection with this particular account, the Almetal Universal Joint Company of Cleveland, they, the consignor, do absorb the freight charges in the invoice or debit memo as a final accounting?

A. Yes, sir.

Q. And those charges which your firm originally pays to P. C. W. A.?

A. That's right.

Q. What other shipper or shippers handle their transportation similarly through the facilities of P. C. W. A., with your firm?

A. A lot of them. I don't know. They have got about 200 shippers. I couldn't tell you all who does handle it that way.

Q. Do other shippers handle their transportation to you on a prepay, that is, an outright prepay basis? The P. C. W. A. freight bills, for instance, would show in the prepay column the charges as having been paid at the point of origin?

A. I don't know whether they do or not.

923 Mr. TAYLOR: I believe that is all, Mr. Lambert.

Cross Examination.

Q. (By Mr. AMES) Mr. Lambert, do you have people other than this concern at Cleveland, you have just been talking about, who sell you the same thing that the Cleveland firm sells you?

A. You mean, the same commodity?

Q. Yes.

A. No, sir.

Q. Do you have other firms with whom you deal where more than one concern in the east is a possible source of supply to you?

A. You mean, on the same kind of material?

Q. Yes.

A. No, sir. We represent different firms. That is, there might be some little items, but I mean, no major accounts.

Q. Your major accounts, then, you obtain a certain item from one concern only?

A. That's right.

Q. And that it is the only concern in the east that produces it?

A. Well, it is the only concern we represent out here.

Q. Do you deal with the regulated freight forwarders, other than the P. C. W. A., in any of your business?

A. There is some material comes in that way.

Q. As I understand your status with the P. C. W. A., you pay them in the first instance the regular freight forwarder's rate?

A. Well, I don't know whose rate it is, but I pay their rate.

924 Q. You pay the rate they charge?

A. That's right.

Q. And then, at a later time, they make an adjustment and return some of that money to you?

A. That's right.

Q. When you joined the P. C. W. A., did you pay an initiation fee?

A. Yes, sir. I don't know whether it was an initiation fee. We paid some money at the time we joined. I don't know whether it was called an initiation fee; an expense account.

Q. You paid money at the time you joined?

A. That's right.

Q. Have you, since that time, made any cash contribution?

A. Not that I remember of.

Q. Since that time you have made no cash contribution to the P. C. W. A.?

A. Not that I remember of, at all.

Mr. AMES: That is all.

Exam. WAY: Mr. Gordon?

Cross Examination.

Q. (By Mr. GORDON) Mr. Lambert, in connection with the shipments referred to in Exhibit No. 32, which were shown to you by Mr. Taylor, isn't it a fact that your purchase contract from the consignor here included, among its terms, that the freight charges would be absorbed by the seller?

A. Our contract calls for f. o. b. Los Angeles.

925 Q. And the amount of the freight charges absorbed by the seller, is the amount figured at the regular freight forwarder rate, is that right?

A. The regular rate that is listed. I get the bills for it. I don't know where that rate comes from.

Q. And that has been the practice in your dealing with this shipper?

A. Yes, sir.

Q. Do you know whether the Almetal Company is aware of the fact that you effect some saving by the use of the P. C. W. A. facilities in shipping your goods from Chicago to Los Angeles?

A. I do not know.

Mr. AMES: What was the answer?

The WITNESS: I do not know.

Mr. AMES: I was going to object. He says he doesn't know.

Q. (By Mr. GORDON) Mr. Lambert, I believe you were a member of the P. C. W. A. a long time ago when it was first organized, were you not?

A. That's right, yes.

Q. And you were one of the organizers of the old association that preceded the present corporation?

A. Yes, sir.

Q. And you were an officer of the old association, were you not, Mr. Lambert?

A. Yes.

926 Q. Director. Don't you recall that in the early history of the old association there were some assessments levied against the members?

A. When we first started out, we put up some money to finance the cost of forming the corporation—I mean, the association we had at that time.

Q. And your company paid those assessments?

A. We paid our proportion of it, yes.

Mr. GORDON: That is all. Thank you.

Cross Examination.

Q. (By Mr. AMES) When was that, and what did you pay?

A. Well, I don't know what I paid, and I don't know when it was, because it was a long time ago.

Q. It has been a long time ago?

A. Yes.

Q. Has it been more than five years ago?

A. Yes, sir, probably 10 years, maybe longer.

Q. Maybe longer than 10 years ago. And, since the time you paid those assessments, you haven't made any cash contribution, have you, that is, where you actually give them money?

A. Not that I remember of.

Q. Not that you remember?

A. Not in the last few years. I might have in the first place, because we had quite a lot of expense starting this.

Q. I am talking now, taking your own testimony.

927 For about 10 years you haven't made any contribution?

A. I didn't say 10 years. I said maybe for five years.

Q. All right. Can you supply for the record within 10 days, the date of the last assessment you paid in cash to this organization?

A. I may be able to. I don't know whether that was charged to expense or not, but I can check our records, have our auditor check it up and see.

Q. Have you made any contribution since this present corporation was formed?

A. No, sir.

Mr. AMES: That is enough.

Mr. GORDON: You mean, cash contribution?

Mr. AMES: Yes, cash contribution.

The WITNESS: That is right, yes.

Mr. GORDON: That is all.

Exam. WAY: You are excused.

(Witness excused.)

Mr. TAYLOR: Mr. Examiner, we find that we still have some exhibits to offer in connection with the Master Exhibit No. 38, which inadvertently was omitted when Mr. Anderson was on the stand, and I will ask him to take the stand, please, to identify those records, which he also obtained in Mr. Olson's office.

H. B. ANDERSON resumed his testimony as follows:

928 Direct Examination—Continued.

The WITNESS: May this be marked Exhibit No. 52?

Exam. WAY: It will be marked Exhibit No. 52.

(The document referred to was marked as Commission's Exhibit 52, Witness Anderson, for identification.)

The WITNESS: With respect to Exhibit No. 38, and uniform straight bill of lading attached thereto of Webber Cartage Line, Inc., that is No. 4672, dated at North Chicago, Illinois, February 21, 1946, covering a shipment consigned to Chanslor & Lyon Co., Bakersfield, California, we offer a copy of P. C. W. A. freight bill No. CLA 1737-10, dated February 15, 1946, for a shipment from Auto Maintenance Machinery Company, Chicago, Illinois, to Chanslor & Lyon Co., Bakersfield, California, weight, 284 pounds, collect charges, $11.08.

There is also attached a copy of freight bill of Webber Cartage Line, Inc., Waukegan, Illinois, Pro No. C 50148, dated February 2, 1946, covering the charges on this shipment from North Chicago, Illinois, into Chicago, and a copy of Santa Fe freight bill No. 4371 GW, dated February 25, 1946, with copy of Baltimore and Ohio Railroad Company bill of lading covering car GN No. 29964, shipped from Chicago, Illinois, February 6, 1946.

The latter two documents cover the carload shipments which contained the shipment from Auto Maintenance

Machinery Company on February 2, 1946, from
929 North Chicago, Illinois, to Bakersfield, California.

This P. C. W. A. freight bill shows collect charges of $11.08. There was a saving of $1.79 returned to the member on this shipment.

I offer this as Exhibit No. 52.

Exam. WAY: Is there any objection?

Mr. GORDON: No objection.

Exam. WAY: Received.

(Commission's Exhibit No. 52, Witness Anderson, was received in evidence.)

Mr. TAYLOR: That is all, Mr. Anderson.

Do you have any questions of Mr. Anderson?

Mr. AMES: I have some. Is he going to come back for cross?

Exam. WAY: Off the record.

(Discussion of the record.)

Exam. WAY: On the record.

You will be recalled later for cross examination.

(Witness temporarily excused.)

Mr. TAYLOR: Call Mr. Elmer Jensen, please.

ELMER JENSEN was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Jensen, are you an official of the Colyear Motor Sales Company of Los Angeles?

A. Yes, sir.

Q. What is your position?

930 A. Vice president.

Q. And as such are you familiar with the sales and shipping transactions of your concern?

A. Yes, sir.

Q. Is your principal office and plant located in Los Angeles?

A. Yes, sir.

Q. Do you have branch stores located elsewhere?

A. Yes, we do.

Q. On the Pacific Coast?

A. Yes, sir.

Q. Mostly in the State of California, or are they also in other states?

A. We have stores in California, Oregon, Washington, Arizona and Idaho.

Q. And you serve generally the Pacific Coast area of the continental United States?

A. Yes, sir.

Q. Your firm is a charter member, is it not, of P. C. W. A.?

A. Yes, sir.

Q. And for the purpose of obtaining the benefit of carload freight rates?

A. Yes, sir.

Q. Do the part lot shipments consigned to your firm usually move on a collect basis?

A. Do they usually move?

931 Q. Yes, on a collect basis.

A. Yes, sir.

Q. That is to say, your concern, in its shipments from the east, pays the freight charges on those part lot shipments?

A. We pay the freight.

Q. And Mr. Olson's office presents you with individual freight bills covering each part lot shipment?

A. By "Mr. Olson's office", you mean the P. C. W. A. office?

Q. Yes.

A. Yes, sir.

Q. Which your firm pays on the freight basis as published by the regulated freight forwarding companies?

A. Yes.

Q. And thereafter Mr. Olson's office makes refunds to you which represent the savings resulting from the application of carload rates?

A. Yes, sir.

Q. In connection with these collect shipments, do some of them represent merchandise which was sold by the consignor manufacturer on a delivery or destination f. o. b. basis?

A. We receive allowances from some of our factories on such shipments.

Q. And in such instances your firm makes invoice or credit memorandum adjustments by billing the consignor for the freight charges paid?

932 A. We bill some of them. Some—the freight is allowed on the face of the invoice.

Q. And in such instances that constitutes a freight allowance transaction, does it not?

A. That's right.

Q. Are many of your purchase accounts handled in this manner?

A. Yes, sir.

Q. Representing different manufacturers throughout the country?

A. Yes, sir.

Q. Referring to Exhibit No. 38, containing photostatic copies of Automotive Maintenance and Machinery Company, North Chicago, Illinois, referring to the abstract sheet No. 1, the sixth entry thereon, under bill of lading, date and number column, which shows date 2/23/46, No. 4944, referring to the bill of lading, I hand you, Mr. Jensen, a photostatic copy of bill of lading No. 4944, dated February 23, 1946, and will ask you to examine that bill of lading and advise if it does not support the shipment of six cartons and four boxes of machines N. O. I. B. N., weight 432 pounds, consigned by the Automotive Maintenance Machinery Company to yourselves at San Francisco?

A. Yes, sir.

Q. And, on the face of that, does it show, "Invoice G 20671"?

A. Yes, sir.

Q. Referring to the freight bill thereto attached, No. P. C. W. A. freight bill No. 1078-11, dated March 13,

933 1946, does that freight bill cover the same shipment?

A. Yes, sir.

Q. That is 10 packages weighing 432 pounds. Does it show the rate as being $3.07, collect charges, $13.26, and show 3 per cent extension, 40 cents, a total of $13.66, as being the total charges?

A. Yes, sir.

Q. Did your firm, Colyear's pay the charges there indicated?

A. Yes, sir.

Q. Referring to the next attached document headed "Claim—Colyear Motor Sales Company—Home Office Claim No. 3942", addressed to the Automotive Maintenance Machinery Company, 2100 Commonwealth Avenue, North Chicago, Illinois, I will ask you if that claim document does not list, at the sixth entry, No. CSF 1078-11, dated 3-13-46, 432 pounds, S. F. $13.66?

A. Yes, sir.

Q. Does not the claim also cover additional freight bills paid by your concern through the P. C. W. A. account, in the total number of 19?

A. If that is 19, yes.

Q. Will you count them, please?

A. No. 17.

Q. I note that two of them are Acme, and are not P. C. W. A. Then, the question is: Does not this claim cover 17 P. C. W. A. collect freight bill from Auto-
934 motive Maintenance Machinery Company?

A. Yes, sir.

Q. And does not the document—

A. That is by P. C. W. A.

Q. Yes, sir. And does not the claim also read:

"The following freight bills should have been prepaid. Please send us your credit memorandum to cover."

And doesn't the total extension—

Exam. WAY: What is your answer?

Mr. TAYLOR: Pardon me.

Exam. WAY: You asked him a question. I didn't hear him answer.

Mr. TAYLOR: I was going to give it to him all in one.

Exam. WAY: All right.

Q. (By Mr. TAYLOR) And doesn't that document show a total claim of $153.27, which includes the two Acme freight bills listed thereon, identified as CMA 1451, dated April 27, 1946, in the amount of $7.12 and Acme freight bill C 46355, dated May 16, 1946, in the amount of $7.26, is that correct?

A. Yes, sir.

Q. And therefore the document is a claim against Automotive Maintenance Machinery Company for 17 P. C. W. A. freight bills, which total $153.27 less $14.38, is that correct?

A. Yes, sir.

Q. Does your concern customarily handle its sales
935 transactions with Automotive Maintenance Machinery Company of North Chicago in this similar manner, that is to say, insofar as the transportation charges are concerned, you pay the freight charges, and charge those accounts back to the Automotive Maintenance Machinery Company?

A. Yes, sir.

Q. And do you engage in the same general practice with shippers other than the Automotive Maintenance Machinery Company?

A. Yes, sir.

Q. What other concerns?

A. By name?

Q. Yes, or are they too numerous to mention?

A. I wouldn't remember the names. I have the names of some of them in my case. There are quite a few people.

Q. I guess it won't be necessary to name them.

And, it is a more or less general practice to handle your shipping accounts in this manner just illustrated?

A. Yes, sir.

Mr. TAYLOR: I believe that is all, Mr. Jensen. Thank you.

Exam. WAY: Cross examine.

Cross Examination.

Q. (By Mr. AMES) Mr. Jensen, did you hear me ask Mr. Lambert some questions about contributions, cash contributions to the P. C. W. A.?

A. Yes, sir.

936 Q. If I asked you the same questions, would your answers be the same?

A. Would they be the same?

Q. Yes, as Mr. Lambert's.

A. Well, I would answer that our concern, the P. C. W. A. —that is, the Association—when it was started we made a contribution to the Association.

Q. At what time was that? What year was that?

A. I don't know what year it was.

Q. It was developed in the last hearing here, wasn't it, when you were on the stand before?

A. The time that it was started?

Mr. AMES: Maybe Mr. Gordon can prompt you.

Mr. GORDON: Just speaking from memory, I think the record made in the preceding hearing shows that the Association started in 1935, or thereabouts.

Q. (By Mr. AMES) As I understand, you made a contribution then in order to get the thing going?

A. Yes, sir.

Q. How many have you made since, if any, cash contributions?

A. I don't know of any cash contributions we have made, except the amounts that are withheld from our savings, that go into the revolving fund, which was also discussed at the last hearing.

937 Q. Other than the revolving fund, you haven't made any cash contribution?

A. I don't remember of any.

Q. That is, apart from that one in the beginning?

A. Yes, sir.

Q. You use other freight forwarders, do you not, besides the P. C. W. A.?

A. Yes, sir.

Q. I don't mean that you call them a freight forwarder. You use the regulated freight forwarders? We will put it that way.

A. Yes, sir.

Q. If it were not for the exemption accorded the P. C. W. A., you would pay those other forwarders the same transportation charge you pay the P. C. W. A.?

A. The same amount as we are now billed by the P. C. W. A.

Q. In the first instance?

A. Yes, sir.

Q. So that the benefit you secure by belonging to this group is the savings between the carload rate that is paid and the forwarder's rate you pay in the first instance?

A. The carload and the incidental expenses.

Q. That's right, plus the expense of running the office, plus the revolving fund?

A. Yes, sir.

Q. Do you ever make sales directly to your customers, Mr. Jensen, out in these states of Idaho, Oregon,
938 places like that, where the shipment is made direct to them?

A. Very seldom.

Q. You have done it, though, haven't you?

A. We have made a few shipments perhaps from the Colyear Motor Sales Company into Montana.

Q. Into Montana?

A. Yes, sir.

Q. And those were delivered direct to your customers?

A. Yes, sir.

Q. And did you claim the benefit of the saving?

A. I am not sure they moved by P. C. W. A. into Montana.

Mr. Ames: I believe the record shows, Mr. Examiner, in one of these exhibits—I can't recall the number of it—that the Colyear Motor Sales Company made a sale direct to a customer at Evanston, Wyoming.

The Witness: I don't think so.

Mr. Ames: Well, it is in evidence. If it is in evidence, it is there.

The Witness: Just off the record, I don't believe we sell into Wyoming.

Q. (By Mr. Ames) If you did make a shipment, or cause a shipment to be made direct to one of your customers, and they paid the freight charges on it, you in turn would

claim the benefit of the saving from the P. C. W. A., would you not?

A. Our customer would never pay the freight
939 charge. Our merchandise is all sold f. o. b. the Pacific Coast.

Q. But in some cases you have claimed these savings where it was sold f. o. b. Pacific Coast—you have claimed those savings when it comes to you direct?

A. We pay the freight, so we claim the savings.

Q. Yes, but you had a freight allowance arrangement?

A. That's right.

Q. Assuming that you had the same arrangement with a customer in one of these outlying states, you would claim the benefit of the saving from the P. C. W. A. if they handled the transaction, wouldn't you?

A. Yes, sir.

Exam. WAY: In other words, then, on a shipment to Evanston, Wyoming, to your customer, you would claim the saving from the Pacific Coast Wholesalers' Association?

The WITNESS: Yes, sir, but we would also have paid the freight charges on the shipment, and we have no merchandise sold to customers f. o. b. factory.

Q. (By Mr. AMES) You would have paid, in the sense that you physically paid, but it might have been subject to one of these freight allowance arrangements?

A. Not with our customer.

Q. Not with your customer, but with you?

A. Between our company and our factory.

Q. That's right.

940 A. That's right.

Q. Do you buy any of your supplies from competing manufacturers in the east?

A. We buy from two competing manufacturers the same line of goods, you mean?

Q. Maybe I don't make myself clear. Do you deal in things where you have more than one source of supply?

A. No, sir.

Q. In other words, in your inventory items you deal with one concern in the east on all of them, that is on each one?

A. By lines, yes, sir.

Q. Are you a representative in this territory of these eastern people?

A. We have exclusive representation of a number of the factories through the Automotive Parts Association. We are the only representative of that association here. Then

we also distribute some lines that are also handled by our competitors.

Q. Do you have shipments made directly to these branch houses indicated on Exhibit 50?

A. Yes, sir.

Q. You have shipments made to them direct?

A. Yes, sir.

Q. And those shipments in turn are subject to the freight allowance arrangements you have with your suppliers?

A. Yes, sir.

941 Q. And on all of those shipments you would claim the benefit of the refund from the P. C. W. A. if they handled the shipment?

A. Yes, sir.

Mr. AMES: That is all.

Cross Examination.

Q. (By Mr. GORDON) In handling these claims for refunds between your supplier and yourself, where a freight allowance figures into the price, is that done pursuant to your contract of purchase with the suppliers?

A. Yes, sir.

Q. Mr. Jensen, is it not a fact that in the early history of the old Association, that there were several contributions in the way of assessments made by the members to keep the old Association going with sufficient funds to meet its overhead?

A. It seems, in the first years of the Association, but I have no idea of the dates or amounts that were contributed.

Q. It wasn't just one payment at the start, and then no more thereafter, was it?

A. No.

Q. There were several contributions made as money was needed?

A. In the early days.

Q. And at the present time the current financial requirements of the corporation, P. C. W. A. are met by the revolving funds, are they not?

A. Yes, sir.

942 Q. Regular assessments for other overhead expenses that are deducted from the savings realized by the members?

A. Yes, sir.

Mr. GORDON: That is all.

Cross Examination.

Q. (By Mr. AMES) When you speak of early days now, what do you mean? Do you mean prior to 1940?

A. Yes, that would be prior to 1940.

Mr. AMES: All right. That is all.

Exam. WAY: What office do you hold with the Pacific Coast Wholesalers' Association now?

The WITNESS: President.

Exam. WAY: That is all.

Mr. GORDON: Just a moment.

While Mr. Jensen is on the stand, I have some questions that are really in the nature of direct. Is there any objection to my interrogating him briefly?

Exam. WAY: Do you have any objection?

Mr. TAYLOR: No objection.

Exam. WAY: All right. Proceed.

Cross Examination.

Q. (By Mr. GORDON) Mr. Jensen, since the hearings in this proceeding in Los Angeles, early in 1945—I think they were early in February of 1945—I will ask you to state whether or not there have been regular meetings held
943 by the Pacific Coast Wholesalers' Association board of directors?

A. There have been regular meetings.

Q. Are they recorded in this minute book which I show you here?

A. Yes, sir.

Q. You recognize, do you, your signature as president appended to several of these minutes of meetings held subsequent to February 14, 1945?

A. Yes, sir.

Q. I will ask you also to state whether or not, as indicated by this minute book, there were annual meetings of the members of the corporation held in 1945 and in 1946?

A. Yes, sir.

Mr. GORDON: That is all that I have.

Mr. TAYLOR: May we ask that the Association supply us with a copy of the annual report for 1945 and 1946 to the members, that is, the annual report to the members?

Exam. WAY: Will you?

The WITNESS: Yes, sir.

Exam. WAY: Can you furnish it before the close of this hearing, or will you require some time to prepare it?

The WITNESS: Would that be today or tomorrow?

Exam. WAY: I don't know whether it would be tomorrow or not, but it will be today.

Are those annual reports in printed form?

944 Mr. GORDON: I do not think they are in printed form, but we will undertake to procure the annual reports that were presented at the two annual meetings to which I referred, to wit, 1945 and 1946, covering the preceding years. We will furnish copies for the record.

Exam. WAY: You will do that before the hearing closes?

Mr. GORDON: I am not sure that we can get them up here this afternoon. If this hearing closes today, we will have to have some time.

Exam. WAY: All right. We will see how long we run.

Mr. GORDON: Ten days would be ample time, if we may file them as a late filed exhibit.

Exam. WAY: Is ten days all right with you?

Mr. TAYLOR: That is satisfactory.

Exam. WAY: All right. Furnish them within ten days.

(The documents described to be furnished by respondent.)

Re-direct Examination.

Q. (By Mr. TAYLOR) Mr. Jensen, don't your by-laws require a printed annual report be submitted to the membership at the end of each fiscal year or calendar year?

A. I don't know whether they require a printed report.

Q. Have you actually made any report to the membership as individuals of the condition, the status of P. C. W. A. at any interims?

A. Reports were rendered at the annual meeting
945 of the members, and each one present was handed a copy of that report.

Mr. TAYLOR: I see, thank you. That is all.

Mr. GORDON: That is all I have.

Exam. WAY: Any questions?

Re-cross Examination.

Q. (By Mr. AMES) Taking up first the meetings of the board of directors, Mr. Jensen, you say that you had regular meetings since 1945. I take it from that that your meetings before that were irregular?

Mr. GORDON: I object to that as argumentative.

Q. (By Mr. AMES) Let me ask you: Prior to 1945, did you have regular meetings of the board of directors?

A. Our minute book will show what meetings we had.

Q. Can you answer me whether you had regular meetings? You are the president.

A. Well, we had meetings. I don't know whether you would call them regular or not.

Q. You are willing to stand on the presentation made at the last hearing on that?

A. Yes, sir.

Q. Why was it that after 1945 you made something regular that prior to that time was irregular? Why was it that you changed your practice?

Mr. GORDON: Just a moment, please. That assumes facts not in evidence, and is argumentative. I don't
946 know what counsel has in mind, but the minute book is here available for the inspection of counsel and the Commission. There has been no distinction made between the regularity or irregularity of any meetings.

Exam. WAY: I think the minutes show the meetings, at least, down to the last hearings, which were in 1945.

Mr. AMES: I will submit it shows irregularity

Exam. WAY: I don't know what it shows. It is in the record.

Mr. AMES: I submit that it does.

Exam. WAY: Can you answer the question?

Mr. AMES: I will ask a question.

Q. (By Mr. AMES) Why did you have regular meetings after February, 1945, when you certainly had meetings that could not be classed as regular prior to that time—we will put it charitably.

Mr. GORDON: Object to that again as assuming facts not in evidence, and argumentative.

Exam. WAY: Let him answer, if he can. This is an investigation. We are trying to find out the facts.

Do you know?

The WITNESS: I wouldn't know how to answer his question.

Mr. AMES: All right.

Q. (By Mr. AMES) Now take the annual meetings. You did not have any annual meetings of your member-
947 ship prior to 1945, did you?

A. I would need to refer to the minute book. I don't remember all these dates of P. C. W. A.

Q. Do you mean to say that, as president, you don't know whether you had an annual meeting of your members?

A. Prior to 1945, you asked me.

Q. Yes. I am not talking about the board of directors. I am talking about your members.

A. I know what you are talking about.

Q. When was the last meeting you can remember where your membership attended?

A. I wouldn't say definitely, without referring to the minute book, later than—

Mr. AMES: Let us have the minute book.

Is it here?

Mr. GORDON: Yes.

Mr. AMES: There is no need of beating around the bush here. If you can show him a meeting of your membership prior to 1945, I will withdraw the question. The minute book is here. I will ask that he be given time to look at it.

Let me see it, too.

Mr. GORDON: Surely.

I have just been reviewing with Mr. Ames here the original minute book and the minutes of all meetings prior to February, '45 which were included in the record
948 by exhibit previously. In checking this over with Mr. Ames, I think that we will agree that the first annual meeting of the members recorded relates to a meeting held January 10, 1945.

Exam. WAY: That is of the incorporated Association?

Mr. GORDON: Yes, that is the minutes of the incorporated Association. The minutes also show that the first meeting of the board of directors following was held December 14, 1943, the corporation itself was incorporated September 27, 1943, by the filing of its articles of incorporation with the Secretary of State of California.

The minute book, I think, also shows—and I believe counsel will agree—that, following the annual meeting to which I referred, in January, 1945, there was an adjourned annual meeting, adjourned from January 10th of that year, to March 14, 1945, the minutes of which are recorded in this book, and that there is also recorded minutes of an annual meeting of members held Wednesday, March 13, 1946, which is the last record of any meeting of the members.

Exam. WAY: Does that satisfy your question?

Mr. AMES: That is all right.

Q. (By Mr. AMES) Now, Mr. Jensen, apart from the differing percentages that might be paid to Mr. Olson now, or his office, as contrasted with the early days, and apart from this arrangement you have as to the revolving fund for this contribution to the so-called "legal fund" that you
949 are making, your method of doing business with the P. C. W. A. is the same now as it was in the beginning, is it, and, if it isn't, tell me what differences there are?

A. In dealing with the office maintained and operated by Mr. Olson for the P. C. W. A.?

Q. Yes, I don't mean to make any confusion between Mr. Olson and the P. C. W. A., but I am talking about the overall objective, the *modus operendi* of doing business, is the same now as it was in the beginning, except for the changes in percentages, the revolving fund and the legal fund, isn't that correct?

A. Yes, sir.

Mr. AMES: I have nothing further.

Mr. GORDON: That is all I have.

Exam. WAY: You are excused.

(Witness excused.)

Exam. WAY: We will recess until 1:30 o'clock.

(Whereupon, at 12:10 p. m., a recess was taken until 1:30 p. m. of the same day.)

950 AFTERNOON SESSION 1:30 p. m.

Exam. WAY: All right, gentlemen, come to order, please.

Call your next witness.

Mr. TAYLOR: Mr. Ernst.

JULE ERNST was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) What is your full name, please?

A. Jule Ernst, J-u-l-e.

Q. Are you an official of Chanslor & Lyon Company?

A. No, sir. Featherstone's, Incorporated.

Q. Oh, pardon me. And, as such, are you familiar with the sales and shipping transactions of your firm?

A. Yes, sir.

Q. Is your principal office in Los Angeles?

A. Only have one, yes.

Q. Only one office? No branch stores?

A. No.

Q. Is your firm a charter member of the Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. Do the part lot shipments consigned to your firm move mostly on a collect basis?

A. Yes, I think so.

Q. Which your firm pays on the rate basis as pub-
951 lished by the regulated freight forwarding companies?

A. I would say, yes. Whatever Mr. Olson charges.

Q. And you make payment of these freight bills as they are tendered to you by Mr. Olson's office, as general manager for the Association?

A. Yes.

Q. And thereafter Mr. Olson's office makes refunds to you which represent the savings resulting from the application of carload rates?

A. Yes.

Q. In connection with the collect shipments, do some of them represent merchandise which was sold by the consignor manufacturer on a delivery or destination f. o. b. basis?

A. State that again?

Mr. TAYLOR: Read the question, please.

(The question was read.)

The WITNESS: Mostly, yes.

Q. (By Mr. TAYLOR) And in such instances does your firm make invoice or credit memoranda adjustments by billing the consignor for the freight charges paid by you?

A. Yes.

Q. And that, incidentally, converts the shipments to a freight allowance basis, does it not, insofar as your transaction with the manufacturer or distributor is concerned?

A. When everything is f. o. b. Los Angeles.

952 Q. And you handle quite a number of such shipments in this manner, do you not?

A. Yes.

Q. You probably would be unable to give us a probable percentage of your freight collect shipments, the charges of which are later charged against the consignor?

A. That would be kind of hard for me.

Q. Would you say as many as half of your collect shipments are charged back to the consignor, or would you say less than that?

A. I would say less.

Q. Would you say less than 25 per cent?

A. It is kind of a hard question for me to answer.

Q. Then you don't know what approximate percentage?

A. No, I don't.

Q. Your concern also receives some shipments which are prepaid by non-member consignors in the east, does it not, Mr. Ernst?

A. Non-members?

Q. By non-member consignors in the east.

A. Define that.

Q. Well, for instance, you are a customer of a manufacturer in the east who makes shipments to you on a freight paid basis. Don't you handle some shipments of that nature?

A. On a prepaid basis?

953 Q. Yes.

A. Yes.

Q. And in those instances the shipper, speaking of the consignor, pays those charges to P. C. W. A. at point of origin, is that not so?

A. Yes.

Q. Calling your attention to Exhibit No. 34, I refer, for instance, to P. C. W. A. freight bill CLA 2009-25, dated November 8, 1946, from Imperial Brass Manufacturing Company, Chicago, to Featherstone's, Incorporated, Los Angeles, which consists of one package weighing 210 pounds, rate $2.25, freight, $4.73, 3 per cent added, 14 cents, making a total of $4.87.

In this instance, did not the Imperial Brass Manufacturing Company prepay the freight charges?

A. In answering this (indicating), I will say that goods by the Imperial Brass Manufacturing Company, outside of what is stated here, is f. o. b. Chicago.

Q. But in this particular instance of copper tubing merchandise, the Imperial Brass Company prepays the charges all the way through, do they not?

A. I think so, according to this (indicating).

Q. Doesn't this freight bill so indicate, that they did in this instance?

A. It so indicates.

Q. Thank you. Do any other of your consignor,

954 shippers in the east prepay freight charges to you, if you can recall?

A. I can't recall any particular ones.

Q. But there may be some?

A. May be.

Q. You think there are others besides this particular consignor shipper?

A. Yes, I think so.

Q. Who prepay shipments to you?

A. Yes.

Q. That is to say, they prepay their charges to Pacific Coast Wholesalers' Association in this same fashion as I have called your attention to in Exhibit 34?

A. That is an odd one.

Mr. TAYLOR: Thank you. That is all, Mr. Ernst.

Exam. WAY: Cross examination?

Cross Examination.

Q. (By Mr. AMES) Mr. Ernst, in the early part of your direct examination you indicated to Mr. Taylor that most of your collect shipments were sold on an f. o. b. Los Angeles basis, is that correct?

A. Yes, pretty near all of our merchandise is f. o. b. Los Angeles.

Q. Pretty near all of it?

A. Yes.

Q. I will ask you if your company, Mr. Ernst, has
955 made any cash contributions to the P. C. W. A. in the past five years?

A. As far as I can remember, no.

Mr. AMES: That is all I have.

Cross Examination.

Q. (By Mr. GORDON) Mr. Ernst, it is true, is it not, that wherever there has been any freight allowance on any of your shipments for which the consignors were billed, that that was a part of your purchase contract with this consignor?

A. They are all that, yes.

Q. In other words, they quoted you a price on the goods that you bought from them, a certain figure less freight allowance?

A. That's right.

Q. That was the contract of purchase that you had?

A. Yes.

Mr. GORDON: That is all.

Exam. WAY: You are excused.

(Witness excused.)

Mr. TAYLOR: Mr. Percy Lyon.

PERCY LYON was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Mr. Lyon, are you an official of the Chanslor & Lyon Company of Los Angeles?

A. Yes.

Q. What is your position, please?

956 A. Manager.

Q. As such, are you familiar with the sales and shipping transactions of your firm?

A. Yes.

Q. Your principal place of business is in Los Angeles?

A. San Francisco.

Q. Do you have stores located in Los Angeles and other cities on the West Coast?

A. Yes, confined to California.

Q. And your firm is a charter member of the Association, is it not?

A. Yes.

Q. Do the part lot shipments consigned to your firm move mostly on a freight charge collect basis?

A. Mostly. I wouldn't know, but a great quantity do.

Q. Would you say the greater proportion move on a prepaid basis?

A. No, I would say the average on a collect basis, must be about half.

Q. You would say about 50 per cent collect and 50 per cent prepaid of all your shipments?

A. No, I wouldn't say the other 50 per cent was prepay. I would say there was some balance prepaid, and some collect.

Q. Speaking of collect now, do you mean those shipping instances in which your firm pays the freight charges
957 and is not later reimbursed by the consignor?

A. No, I mean the general run of the question in here, reimbursement.

Exam. WAY: I don't get that.

The WITNESS: He was defining—or, I understood he asked me what part of collect did I refer to. I said that I referred to the type of questions that had been preceding me, where they had been reimbursement.

Exam. WAY: You mean sold f. o. b. Los Angeles on a delivered basis?

The WITNESS: Yes.

Q. (By Mr. TAYLOR) And Mr. Olson's office, as general manager, presents your firm with individual freight bills covering each part lot shipment on which you pay the freight charges?

A. That's right.

Q. Are those freight bills usually calculated on the basis of freight forwarding company rates?

A. As far as I know.

Q. And thereafter does Mr. Olson's office make refunds to you which represent the savings resulting from application of carload rates?

A. Yes.

Q. Is that true with respect to both collect and prepay shipments?

A. Yes.

958 Q. In connection with the collect shipments, do some of them represent merchandise which was sold by the consignor manufacturer on a delivery on destination f. o. b. basis? That is, in line with the Examiner's question, on which I will progress a little further.

A. Yes.

Q. And in such instances does your firm make invoice or credit memorandum adjustments by billing the consignor for the freight charges paid?

A. Yes.

Q. Referring to Exhibit No. 35, and more specifically to freight waybill of Walker Manufacturing Company, dated June 24, 1946, shipper's No. 24916, which I am exhibiting to you, consigned on its face to Chanslor & Lyon Company, merchandise being shown as two boxes, two bundles, eight loose pieces of—well, auto lifts, and so forth, total weight 1626 pounds, I will ask you if Walker Manufacturing Company, Racine, Wisconsin, invoice No. 24916, does not cover that particular shipment of 1626 pounds, and if that invoice does not allow freight charges of $51.38 in settlement?

A. That one does, yes.

Q. In other words, this is an instance where your company paid the freight charges and then charged them back to the Walker Manufacturing Company?

A. I don't know.

959 Q. Doesn't it appear that way?

A. At least, we received the allowance. I wouldn't guess.

Q. Referring further to a similar shipping order of Walker Manufacturing Company, Racine, Wisconsin, dated August 1, 1946, shipper's No. 31710, doesn't that shipping order cover similar merchandise weighing 1626 pounds, and does not the invoice attached thereto, showing shipment date via P. C. W. A., August 1, 1946, invoice No. 31710, cover the merchandise referred to in the shipping order?

A. Yes.

Q. And does not that invoice show a freight allowance of $54.63?

A. That's right.

Q. Are there other similar shipments handled with Walker Manufacturing Company on the same basis?

A. Our purchase terms are practically the same way that that is shown.

Q. Is this the general contractual relationship with Walker Manufacturing Company, that they are to bill the shipments collect, and then you are to charge the freight back to them in your invoice settlements?

A. Well, now, wait a minute. If they give us the freight, we don't charge them any more than that. That shows on the freight allowance.

Mr. TAYLOR: Would you read the question to Mr.
960 Lyon, please?

(The question was read.)

The WITNESS: I don't want to seem dumb, but I don't understand that question.

Q. (By Mr. TAYLOR) Let me put it another way, then. In your purchases of merchandise from Walker Manufacturing Company, do they, in their invoices to you, always deduct the amount of freight charges?

A. Generally, yes; prevalently. Our relations are based on that, yes.

Q. Do you also have similar transactions with other manufacturing concerns in the East?

A. Yes.

Q. Where they make a freight charge allowance on shipments to you?

A. That's right.

Mr. TAYLOR: Thank you.

Exam. WAY: Cross Examine.

Cross Examination.

Q. (By Mr. AMES) Mr. Lyon, do you ever make shipments direct to your customers from the point of manufacture in the East?

A. There are very few cases in which that is done, but it has been done.

Q. In those cases have you made claim on the P. C. W.
A. for your savings, your customary savings?
961 A. I wouldn't know, but I presume we have.
Q. You presume you have?

A. I wouldn't know.

Q. Let me ask you whether you have made cash contributions to P. C. W. A. in the past five years.

A. Past five years? No.

Q. On Exhibit 48, Mr. Lyon, it is indicated that the freight saving to your company in December, 1944, was $507.00 plus, and in 1945, in December, it was $479.00 plus.

Would you say that those two items are more or less typical of the customary savings that you get through P. C. W. A.?

A. Yes.

Q. In other words, you get something every month back from P. C. W. A.?

A. Yes.

Mr. AMES: That is all I have.

Exam. WAY: Mr. Gordon?

Cross Examination.

Q. (By Mr. GORDON) Mr. Lyon, is it true that in all instances where you derive a benefit of a freight allowance from your supplier in the East, that that is done pursuant to your purchase contract?

A. Every time.

Q. And the effect of the purchase contract is to sell you the goods at a certain figure less freight allowance?

962 A. That's correct.

Q. And the amount of that freight allowance, as you understand it, is the amount that would be charged at the forwarding rate for the shipment of the goods from point of origin to the Coast?

A. We try to get that amount.

Q. That is the maximum amount that you get on freight allowance?

A. Maximum.

Mr. GORDON: That is all that I have.

Exam. WAY: You are excused.

(Witness excused.)

Mr. TAYLOR: Calling Mr. Pedder, please.

WILLIAM N. PEDDER was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Will you state your full name, please?

A. William N. Pedder, P-e-d-d-e-r.

Q. Do you represent the Ducommun Metals & Supply Company of Los Angeles?

A. I do.

Q. What is your official position, please?

A. Traffic manager.

Q. And as such are you familiar with the sales and shipping transactions of your concern?

963 A. Yes.

Q. Your principal place of business is in Los Angeles?

A. Correct.

Q. Do you have any branch stores?

A. No.

Q. Is your firm a member of the Pacific Coast Wholesalers' Association?

A. Yes.

Q. Is it a charter member?

A. Yes.

Q. Do the part lot shipments consigned to your firm move mostly on a collect basis?

A. They do.

Q. Does Mr. Olson's office present you with individual freight bills covering each part lot shipment?

A. Yes.

Q. Which your firm pays on the rate basis as published by a regulated freight forwarding company?

A. Yes.

Q. And thereafter Mr. Olson's office makes refunds to you which represent the savings resulting from the application of carload rates?

A. Yes.

Q. In connection with these collect shipments, do some of them represent merchandise which was sold by the

964 consignor manufacturer on a delivery or destination f. o. b. basis,

A. In practically no cases.

Q. In practically none? But, in some instances?

A. I can't recollect any.

Q. Referring to Exhibit No. 33, and more specifically the bill of lading under the printed form of Blackhawk Manufacturing Company, Milwaukee, Wisconsin, dated July 29, 1946, No. W 29471, and other numerals, to which is attached Blackhawk shipping order W 3967, I will ask you if the shipping order referred to here shows on its face freight allowance?

A. Yes.

Q. Can you tell me whether or not, by examination of this shipping order, that particular quantity, which appears to be one part, No. 887, description, "Porto Power", whether or not that particular identity is included among the various merchandise as shown on the face of the bill of lading?

A. I wouldn't be able to say that with any certainty.

Q. But you do agree that this shipping order of Blackhawk Manufacturing Company, No. W 3967, addressed to Ducommun Metals & Supply Company of Los Angeles, does indicate that freight allowance was made at least with respect to this particular freight covered thereby?

A. Yes.

Q. And now that your memory is refreshed, would you say that the Blackhawk Manufacturing Company
965 probably ships to your concern other merchandise on the same freight allowance basis?

A. Yes.

Q. Can you recall the names of any other manufacturers who may ship in similar fashion on the freight allowance basis?

A. The Superior Tube Company of Collegeville, Pennsylvania.

Q. Any other shippers?

A. Yale & Towne, Philadelphia.

Q. And what others?

A. That is all I can remember at the present time.

Q. In those instances, the manufacturer consignor ships to you on a collect basis, you pay the freight charges, and they are later charged against those concerns. Is that the usual method of handling?

A. They vary. In the case of the Superior Tube Company at Collegeville, Pennsylvania, they ship prepaid, and then they charge freight from the basing point, which might be Milwaukee, or other places.

Q. In other words, in that case it is a part freight allowance, is it not, or part freight charge absorption?

A. Yes.

Q. They assume the charges from a basing point?

A. They charge us with the charges from the basing point.

Q. Referring to Commission's Exhibit No. 48, which contains a recapitulation sheet for the month of December, 1944, and other months, but specifically referring
966 to December, 1944 shipments, does not this exhibit show that the total number of shipments billed to your firm during that month was 141, of which 101 were collect?

A. Yes.

Q. And 403 pay?

A. Yes.

Q. Would you say that the comparison there, of 403 pay and 101 collect, are the average of what your shipments might be for the balance of the months from that date?

A. I think that percentage of prepaid shipments is high, in December.

Q. You don't believe that it would run quite that big, as an average?

A. No.

Q. In connection with this figure of 101 collect shipments during that month, would you say that a good portion of those collect shipments were shipments concerning which you paid the freight charges here in Los Angeles, but which the consignor shipper later absorbed?

A. No. The majority of cases, there would be no great— no freight allowance, simply f. o. b. the mill.

Q. You wouldn't be able to say what probable percentage of those shipments of this 101 were freight allowance or were not freight allowance, would you?

A. I would say less than 30 per cent.

967 Q. Less than 30 per cent of the 101 shown there would be freight allowance?

A. Yes.

Q. Would you say that less than 30 per cent would be the general average for other months?

A. Yes.

Mr. TAYLOR: Thank you, Mr. Pedder. I believe that is all.

Cross Examination.

Q. (By Mr. AMES) In Exhibit No. 50, the territory served by your company is indicated as "Western territory". What does that take in, that Western territory?

A. San Francisco, Los Angeles, Portland, Seattle, and occasional shipments to Arizona and Nevada.

Q. Those are all up and down the Pacific Coast, then, and some shipments to Arizona?

A. Yes.

Q. Do you ever make shipments direct to your customers, or have your producers in the East make shipments direct to your customers?

A. Practically none. There may have been, some time ago, but I just can't recollect that, but not for a long time.

Q. Has your company made any cash contribution to the P. C. W. A. in the last five years?

A. No.

Q. When you pay the freight charges on these
968 collect shipments, and later make invoice adjustment with the consignor, you are paying not only the freight forwarder's rate, but you are adding three per cent to that, aren't you?

A. We are paying the freight forwarder's rate, plus three per cent, and then we usually do not bill back. It is always shown on the face of the invoice.

Q. You bill back what is shown on the face of the invoice, that is, the freight plus the three per cent?

A. Well, there is no necessity for us to bill back, because it is already shown on the invoice.

Q. That's right.

A. Yes.

Q. But, whatever you bill back for, it embraces the money you pay to the P. C. W. A., which is the freight forwarder's rate, plus three per cent?

A. Yes.

Q. So that your consignor is deducting from his invoice three per cent in addition to the freight charges?

A. Yes.

Mr. AMES: That is all.

Cross Examination.

Q. (By Mr. GORDON) Mr. Pedder, it is true, is it not, that whatever you charge back freight allowance, or wherever you receive the benefit of a freight allowance from your suppliers, that is done by your purchase contract,
969 by which you purchase the goods from them?

A. Yes.

Q. And it is determined in advance when you make the purchase?

A. Yes.

Q. Is that freight allowance a matter of negotiation between your company and the supplier, as to how much of a freight allowance they will make to you?

A. That is true. It is handled by the purchasing department, with the mill, and the freight allowances vary. Sometimes it might be full freight, and other times it might be a certain designated amount.

Q. When you bill them back, you bill them the amount of the freight allowance as determined by your purchase contract, is that right?

A. Yes, according to the contract.

Mr. GORDON: Thank you. That is all.

Exam. WAY: Does that contract vary?

The WITNESS: It varies. In the case of Yake & Towne, there might be a certain type of freight allowance on a certain type of hoist, and in other merchandise it might be different.

Exam. WAY: What is the variation? Is it percentage, or what?

The WITNESS: Well, in Yale & Towne, for example, shipments under a hundred pounds—I am not positive on this— but, I believe there is no freight allowance. On shipments over a hundred pounds, there may be full freight allowance.

970

Exam. WAY: That is full forwarder freight allowance?

The WITNESS: Yes.

Exam. WAY: Based on the forwarder's rate?

The WITNESS: Based on the forwarder's rate, yes. We take title at the mill.

Exam. WAY: Do shipments come to you on any other basis?

The WITNESS: At the present time Yale & Towne are selling to us on an f. o. b. basis, and, when certain shipments come by water, that enters into the question, and the freight allowance may be based on a water rate.

Exam. WAY: But wherever it is shipped by freight the general stipulation or agreement is that the freight will be allowed, isn't that true?

The WITNESS: Yes.

Exam. WAY: And they do not specify in dollars and cents what it will be?

The WITNESS: That is in the original contract.

Exam. WAY: All right. You are excused.

(Witness excused.)

Exam. WAY: Off the record.

(Discussion off the record.)

Exam. WAY: On the record.

Mr. TAYLOR: Call Mr. Olson.

971

G. A. OLSON was sworn and testified as follows:

Direct Examination.

Q. (By Mr. TAYLOR) Are you the Mr. G. A Olson, general manager for Pacific Coast Wholesalers' Association?

A. Yes, sir.

Q. Mr. Olson, handing you Exhibit No. 23, referring specifically to P. C. W. A. freight bill CSL 869-4, dated June 7, 1946, covering four cases pulley blocks or chain hoists

with gears, *et cetera*, from Yale & Towne Manufacturing Company, Philadelphia, Pennsylvania, date of shipment May 18, 1946, 1000 pounds, extension, $4.06, I will ask you please if that represents the through freight forwarder rate from Philadelphia to Salt Lake City?

A. Yes I believe it does.

Q. Does that freight bill show paid into Chicago, rate, $1.36?

A. Yes, it does.

Q. Is that deducted from the $4.06 through rate, leaving a balance of $2.70?

A. That's right.

Q. Does the freight bill show that the charges were prepaid in the amount of $27.00?

A. It does.

Q. And below that, three per cent. What does the
972 three per cent cover?

A. 81 cents.

Q. What is the purpose of the three per cent, please?

A. That is to complete the equalization of the forwarding charge.

Q. Is that a government transportation tax?

A. No.

Q. That is not calculated on the basis, then, of three cents for each $1.00 of the freight charges?

A. Oh, yes. It is calculated at three cents for each $1.00, but it is not a tax.

Q. What do you call it, then, please, sir?

A. The three per cent represents what would have been paid as tax if the shipment had been handled by a freight forwarder.

Q. In any event, you did charge Yale & Towne Manufacturing Company $27.00 to cover the freight charges, and 81 cents, at three per cent, making a total of $27.81, did you not, on this particular shipment?

A. Mr. Taylor, the amount of the bill is $27.81, but it does not represent a charge against Yale & Towne Manufacturing Company.

Q. Who paid this freight bill, please, sir?

A. I believe Yale & Towne Manufacturing Company paid it.

Q. Does the freight bill show that payment was re-
973 ceived on June 24, 1946?

A. Yes.

Q. In the amount of $27.81?

A. That is correct.

May I explain the purpose of the—

Q. And was paid by Yale & Towne Manufacturing Company?

A. Yes. I believe it was paid by Yale & Towne Manufacturing Company.

Q. Are they a member of Pacific Coast Wholesalers' Association?

A. They are not.

Q. Is Salt Lake Hardware Company a member?

A. Yes.

Q. Yes, Mr. Olson. You may continue here with an explanation.

A. The amount of this freight bill, $27.81, was received from Yale & Towne Manufacturing Company of Philadelphia for the account of the Salt Lake Hardware Company, as an advance to furnish funds with which to defray the cost of transportation and other services insofar as that particular shipment is concerned, the remainder, after paying such costs and expenses, having been returned to the member for whose account the advance was received.

Q. What approximate amount of that $27.81, or the exact amount, if you know, was returned to the member?

974 A. $4.01 was returned to the Salt Lake Hardware Company on that shipment.

Q. Did the Salt Lake Hardware Company pay P. C. W. A. any portion of the $4.01 which was returned to them in the first instance?

A. The amount was advanced in the first instance by Yale & Towne to the Pacific Coast Wholesalers' Association, for the account of the Salt Lake Hardware Company, and the savings in this instance were $4.01, which was returned by the Pacific Coast Wholesalers' Association to the Salt Lake Hardware Company, and what the Salt Lake Hardware Company did with it after they received it, I wouldn't know.

Q. Referring to Exhibit No. 41, please, sir, does Pacific Coast Wholesalers' Association voucher No. 5571, dated July 29, 1946, in the amount of $27.61, include the $4.01 referred to?

A. I am quite sure that it does, Mr. Taylor.

Q. The $4.06 through rate appearing on that freight bill, how does P. C. W. A. arrive at that rate?

A. $4.06 is the rate that would be charged by the regulated freight forwarders to furnish the same transportation service that was furnished in connection with this par-

ticular shipment, and the three per cent appearing below the rate in the rate column, on the freight bill, would have been charged as a tax by the forwarder, but it is not
975 a tax on this particular freight bill, because it is not remitted to the government. The Internal Revenue Department does not receive any tax on this freight bill.

Q. Who does receive that three per cent on the freight bill?

A. Pacific Coast Wholesalers' Association received the entire amount of $27.81, which includes the three per cent, and the remainder of the through rate, after crediting $1.36 paid into Chicago from Philadelphia.

Q. Then is the $4.06 the published freight forwarder rate on that merchandise?

A. That is what it is supposed to be. I haven't personally checked this rate to see whether it is or not, but I am quite sure that it is.

Q. Do you use the freight forwarder rates, Mr. Olson?

A. We use the freight forwarder tariffs to determine those rates, yes.

Q. And all your freight bills are issued on the basis of freight forwarder rates originally?

A. That is true, Mr. Taylor. Unless there is some mistake in checking that rate, that would be the freight forwarder published rate.

Q. This rate paid into Chicago of $1.36, whose rate is that?

A. In this instance, it is the Pennsylvania Railroad.

Q. Is that comparable to truck rates into Chicago from that same point, or is there a variance in truck rates?

976 A. There is some difference. I can't say offhand just what the difference is.

Q. Now, speaking of this three per cent charge, please, sir, refer again to Exhibit No. 41, which contains a photostat of the original carload freight bill No. 29178, dated June 13, 1946, in evidence of the settlement of freight charges paid by P. C. W. A. to Union Pacific Railroad at Seattle on the car therein indentified.

Will you please advise whether or not the instant shipment of 1000 pounds was contained in this car?

A. Yes, sir, it was.

Q. And within the carload portion bracketed at $1.78?

A. Yes.

Q. On that 1000 pounds, what amount of transportation tax did you pay to the carrier?

A. Union Pacific Railroad Company was paid $17.80 for the line haul service of the carload from Chicago to Seattle, plus three per cent.

Q. What would that three per cent amount to?

A. It would be 53 cents.

Q. Referring back to the freight bill which you rendered to the consignor, that is freight bill No. 869-4, isn't it?

A. Yes, that's correct.

Q. What was the amount of three per cent charged against Yale & Towne on the freight bill?

977 A. The amount on that bill is 81 cents for three per cent.

Q. Then wouldn't that leave a profit in connection with that three per cent on that transaction, a profit of P. C. W. A. or a member of the P. C. W. A.?

A. There is a proportion of profit or saving to the member of approximately three per cent of the amount of their saving. Since the saving on this shipment was $4.01, approximately 12 cents of it would be represented by that 81-cent item there.

Q. That would be the difference, then, simply between the carload rate of $1.78 on a thousand pounds, and the $4.06 rate on a thousand pounds?

A. No, it wouldn't be that amount, Mr. Taylor, because your three per cent tax paid to the railroad was 53 cents, and the amount—the three per cent collected here is 81 cents, and the difference is 28 cents. Only 12 cents of that went back to the member. The other 16 cents was used to pay other transportation taxes.

Q. Well, there is some profit, then, to the Association through this three per cent, whether you call it a transportation tax to the payer of the freight bill, or whether you call it something else, isn't it, Mr. Olson?

A. Mr. Taylor, there is never any profit to the Association. The member realizes a saving by consolidating his freight through the Association, but the Association

978 itself gets no part of it. It all goes back to the member. It is either paid out or returned to the member, and the Association is clean, spends all the money that it receives.

Q. Yes, but each member in a transaction of this kind makes some profit, does it not, off this three per cent?

A. Yes. The member's saving is increased by reason of the three per cent, above what it would be if there were no three per cent, and if we did not have a three per cent trans-

portation tax, the members would not save quite as much money as they do save.

Q. With respect to Commission's Exhibit No. 24, which was received in evidence at Philadelphia, covering other shipments from Yale & Towne to various consignees of P. C. W. A. membership, would you say that the same method of handling of the accounts just explained by you with respect to P. C. W. A. freight bill CSL 869-4, dated June 7, 1946, would also be applicable to those shipments also enumerated on Exhibit No. 24?

A. I think in substance that is correct. I don't see any occasion for any difference.

Q. Then, in connection with the balance of the representative shipments contained on Exhibit No. 24, the member in each instance, an indicated in the first column, has received a freight charge saving in connection with shipments concerning which he, in the first instance, did
970 not actually pay in the freight charges, is that correct, Mr. Olson?

A. I wouldn't say that he received a saving in each instance, Mr. Taylor, because whenever there are losses the member bears the loss, and I wouldn't know, without checking each one of these items, whether there were savings or losses on them. In the instance referred to in that shipment covered by P. C. W. A. freight bill No. CSL 869-4, I did check the saving, and determined it to be $4.01, and that was turned over to the Salt Lake Hardware Company in P. C. W. A. check No. 5971 of July 29th.

Q. But you do not intend to have any losses to the members in connection with these freight settlements, do you, Mr. Olson?

A. No, we don't intend to, and we eliminate losses in every possible instance, but we are unable to eliminate them altogether.

Q. When you do suffer a loss, that is, when the consignee member suffers a loss, what occasions that loss?

A. Well, it is simply that the cost exceeds the amount advanced to defray the cost, and the difference is what we term to be a loss as contrasted to a saving.

Q. Do you mean to say that you sometimes suffer losses to members on the basis of handling these shipments on freight forwarder rates?

A. Oh, yes.

980 Q. Would that be by reason of the published rail rates from Chicago to Los Angeles or other West

Coast destinations, or would that be more likely the result of, for instance, a higher trucking rate into Chicago by a certain trucking company, that was not anticipated by your Association?

A. It could be either one, or both.

Q. But you soon correct those shipments on which you suffer losses, don't you, and handle them in some other method, or instruct the members to handle them in some other way?

A. We advise the members to discontinue such shipments in P. C. W. A. pool cars, and in a large number of instances they follow our advice, if not in all instances.

Q. Thank you.

Handing you Commission's Exhibit No. 30, Mr. Olson, I will call your attention, please, to P. C. W. A. freight bill CSF 1174-2, dated August 1, 1946, from Weatherhead Company, Cleveland, Ohio, to Hinshaw Supply Company, San Francisco, covering the transportation of 14 cartons of pipe fittings, brass, bronze or copper, weight 754 pounds, rate 287, freight charges prepaid, $21.64, 65 cents added, or three per cent; total, $22.29.

I will ask you who paid the freight charges on that shipment, please, sir?

A. The amount of $22.29 was received from the Weatherhead Company of Cleveland, Ohio.

981 Q. Is that concern a member of P. C. W. A.?

A. They are not.

Q. Is the consignee, Hinshaw Supply Company of San Francisco, a member of P. C. W. A.?

A. The Hinshaw Supply Company is a customer of a member, not a member themselves.

Q. I will ask you whether or not the name of any member appears on that freight bill?

A. No it doesn't.

Q. To what member did you credit the freight savings on that shipment?

A. The savings amounted to $2.22, and was paid to Colyear Motor Sales Company.

Q. How could you tell, from the information shown here, that the Hinshaw Supply Company is a customer of this particular member?

A. I couldn't tell you from that freight bill, Mr. Taylor.

Q. You have a list of customers' accounts, I suppose, of members in your office?

A. Well, we have information in our office that that shipment was ordered by Colyear Motor Sales Company, to this Hinshaw Supply Company, and consequently they claimed the credit for the saving, and it was paid to them.

Q. I see. Calling your attention to the attached bill of lading of the Weatherhead Company, Cleveland,
982 Ohio, dated July 16, 1946, shipper's No. 254447, I will ask you please, sir, to examine the bill of lading and advise whether or not that is companion to the freight bill.

A. It appears to be.

Q. Does that show that the charges on the 754 pounds are to be prepaid by the Weatherhead Company?

A. The word "prepaid" appears on the bill of lading in the space where that is appropriately shown.

Q. And who is the consignee appearing on the bill of lading?

A. That has been signed Hinshaw Supply Company in San Francisco, 169 11th Street.

Q. Does the name of Colyear Motor Sales Company appear thereon?

A. No, sir.

Q. Then there is no indication on the bill of lading or on the freight bill that the Hinshaw Supply Company is related to the Colyear Motor Sales Company, is there?

A. No, sir. The name Colyear Motor Sales Company does not appear on the freight bill or the bill of lading

Q. Going on, Mr. Olson, to freight bill, P. C. W. A. freight bill CSL 934-1, dated August 29, 1946, from Weatherhead Company, Cleveland, Ohio, to Idaho Falls Battery Company, Idaho Falls, Idaho, covering one bundle of hose, *et cetera*, weight 30 pounds, prepay freight charges $3.07, three per cent, 9 cents total, $3.16 who prepaid the freight charges on that shipment?

983 A. Well, pardon me, Mr. Taylor, for referring to your manner of stating that this was freight charges, but they were not freight charges.

Q. Aren't they customarily freight charges when they are shown on your similar freight bill document? Isn't that a freight bill?

A. As I attempted to explain some time before, this amount was advanced to the Association.

Q. All right. Who advanced it in this instance?

A. Weatherhead Company of Cleveland, Ohio, for the account of our member.

Q. What member?

A. Which in that instance was—I have a memorandum of that. I think it was Strevell-Paterson Hardware Company.

Q. Strevell-Paterson Hardware Company?

A. I have a memo on the table over there that contains the information which was checked by Mr. Anderson.

Mr. GORDON: I am showing the witness his own office copy of the exhibit, on which appears some memorandum, I presume written by him.

The WITNESS: Yes. The saving on that shipment was 55 cents, and it was paid to Strevell-Paterson Hardware Company.

Q. (By Mr. TAYLOR) The $3.16 you say is an advance made to P. C. W. A. by Weatherhead Company, Cleveland, Ohio?

A. Yes. Mr. Taylor, you can call them freight
984 charges if you want to. I will continue to call them an advance.

Q. All right. What does it cover, then? You call it an advance. What does it cover, if it doesn't cover freight charges?

A. It is an advance to us for the purpose of buying transportation service. We use the money to pay the bills that we have to pay to secure this transportation service for the members.

Q. What do you usually call that transportation service, when you are speaking of money, to move freight? Don't you call that freight charges?

A. Part of it is spent for transportation, for freight charges, to pay the railroad or the truck line or the cartage company, or what it might be, and part of it is used to pay overhead and other operating expenses.

Q. But it is paid to Pacific Coast Wholesalers' Association, is it not?

A. The check is issued by the Weatherhead Company of Cleveland, and it is made payable to the Pacific Coast Wholesalers' Association. The Pacific Coast Wholesalers' Association receives the money and spends it, and if there is anything left, the money is returned to the member. In this instance it was 55 cents. And, this shipment having gone to a customer of the Strevell-Paterson Hardware Company, the 55 cents was given to the Strevell-Paterson
985 Hardware Company, and after the 55 cents was paid to the Strevell-Paterson Hardware Company, the Association had nothing left.

Q. Idaho Falls Battery Company, the consignee, then, at Idaho Falls, Idaho, I assume is not a member of P. C. W. A.?

A. They are not a member of P. C. W. A.

Q. They have never been a member? They are a customer of a member, is that right?

A. That is correct, yes.

Q. And Weatherhead Company of Cleveland, Ohio, is not a member?

A. That is entirely correct, Mr. Taylor.

Q. And the name of a member does not show on the face of this freight bill, does it?

A. No, nor does it show on the face of the bill of lading, which is the next sheet on the exhibit.

Q. Bill of lading headed in printed form, "Weatherhead Company", J-61232, dated August 20, 1946, at Cleveland, Ohio?

A. I don't see the name "Strevell-Paterson Hardware Company" on there anywhere.

Q. But does it not show Liberty Highway Railroad Company consigned to Pacific Coast Wholesalers' Association, Chicago, Illinois, "Route care P. C. W. A.", and, on the face of the bill of lading, does it not show in typewriter "Submark for: Idaho Falls Battery Co., 220 C Street, Idaho Falls, Idaho"?

A. It certainly does.

986 Q. Thank you.

Now, going on to P. C. W. A. freight bill CSL 970-4, dated October 9, 1946, I will ask you if that is not also a freight bill which shows the shipper to be Weatherhead Company, Cleveland, Ohio, and the consignee to be Shaw Auto Parts, Pocatello, Idaho?

A. It does, and the bill of lading next attached reads the same way.

Q. Did some member of P. C. W. A. receive a savings off of what shipment?

A. Yes. My record shows that savings of $1.22 was paid to Strevell-Paterson Hardware Company on that shipment also.

Q. In connection with all of the exhibits which have been received in evidence during the course of these hearings at Philadelphia, Cleveland and Chicago, would you say that P. C. W. A. freight bills appear in those exhibits showing that the charges were prepaid by consignors in the East, the forwarders of that merchandise, that in those instances

savings, if any savings there were in connection with the calculations differentials between the l. c. l. rates and the carload rates, that those savings were in each instance paid to some member of Pacific Coast Wholesalers' Association?

A. Yes, I would say so. I would agree with you, Mr. Taylor, that either the savings or the losses, whatever happens to take place in regard to each shipment, was
987 either paid to or charged to some member of the Association. I have no reason to doubt the correctness of your statement, I think it is correct.

Q. Thank you, Mr. Olson. I think that is going to save us a lot of time here.

I will ask you please, sir, if it isn't a fact that in connection with the vast majority of these shipments, there were some savings to the member?

A. There is in excess of $100,000.00 a year saving over losses, which saving is paid to members.

Q. Are you speaking of these shipments which are prepaid by others than members?

A. No, I am referring to the total savings.

Q. In other words, as you said a few minutes ago, you discontinue the handling of shipments which are unprofitable, don't you? That is only good business.

A. Mr. Taylor, we have no control over the freight that is handled in these pool cars, other than to advise the members how they should route their freight. They do the routing, and if they route a shipment, and it moves in the pool car, and it results in a loss, the member sustains the loss, and the net savings or losses is returned to the member.

Q. But didn't you say a little while ago, in response to my question, that if some of these shipping transactions result in losses to the members, then you recommend
988 to those members that they have their shipments move via some other services, so that they will not suffer losses?

A. Yes. May I give you an illustration?

Q. Yes.

A. Mechanics hand tools is a commodity which, up to the present time, has not been provided with a carload rate in the westbound transcontinental rail tariff. There is a less-than-carload commodity rate on mechanics hand tools which prior to the last general increase, I believe was $2.54 a hundred pounds from Chicago. Now, if a shipment of mechan-

ics hand tools is loaded in our car against our advice, or against instructions of the member, we have to pay the railroad $2.54 a hundred pounds, and, in addition, we have to pay all overhead handling expense on that shipment, which runs the cost up to $3.00 a hundred pounds, or more. The member could have sent that shipment in less-than-carload rail service for $2.54 a hundred pounds, so he loses the difference between what he would have paid the railroad and what he had to pay the Association, his payment to the Association being the net payment after settlement of all items.

Now, I use the illustration of mechanics hand tools because it is commonly understood, and an outstanding instance in this kind of a service, but the same illustration would apply to other commodities.

Q. Isn't that more or less isolated, that is, an account of that kind? You don't have very many of those, do you?

989

A. No, it isn't isolated. We undertake to isolate those cases as much as possible, but almost every member of the Association receives some shipments of mechanics hand tools, and it is quite a regular occurrence. I wouldn't say that it occurs in every car that is shipped, but it occurs often enough to be constantly before us.

Q. Going back again to those Exhibits, Nos. 23 to 40, containing references to shipments, would you say that in most instances those accounts do result in some savings to the respective members of the Association?

A. Are you referring to the shipments covered by the exhibits?

Q. Yes, these specific shipments which are covered by the exhibits.

A. Well, sir, I was referring to all shipments handled in a year in P. C. W. A. pool cars when I said the amount of savings exceeded $100,000.00. I wasn't referring to the shipments covered by the Exhibits, Nos. 23 to 39, inclusive. I don't know what the savings amount to on those shipments, or what the loss amounted to, but I will make a guess that there was probably more savings than losses, but I don't know, and wouldn't know until I had checked up on each shipment.

Q. And these savings that you speak of, which total $100,000.00 a year, for the benefit of all the members, those savings are made up, are they not, of a part of the

990 freight charges which are prepaid by non-member consignors, as we have illustrated here this afternoon, and also, in connection with the collect shipments, concerning which the Los Angeles members, or some of them, have testified, that is, the collect shipments which were later adjusted to a freight allowance basis, that all is included in your sum of $100,000.00 gross profit, is it not?

A. Yes. I could give you the exact amount of savings for each year of the last few years, if I could refer to my records. It is not $100,000.00. I said it was in excess of $100,000.00. But, the savings referred to is the total savings, and it is the total savings returned to members after charging them for losses.

Q. But the membership does participate in the savings on the shipments, whether the members pay those freight charges, and that is the end of the transaction, or whether the sales transactions are handled on a freight allowance basis, or, on the other hand, whether the freight bills are paid to P. C. W. A. by the non-member consignors in the East, is that not correct?

A. I think the only way I could answer your question, Mr. Taylor, is to make the statement that the Pacific Coast Wholesalers' Association returned the saving to the member for whose account the shipment was handled, and the member does whatever he pleases with the money after he gets it.

991 Q. Regardless of whether the shipments are prepay or collect?

A. The so-called "prepaid shipments" are treated no differently by us than those on which the charges are collect. We treat them all alike. They are all thrown in the hopper, and the money comes rolling out.

Q. And that also would apply to the instances in which the shipper allows the freight charges to the member?

A. Those matters don't concern P. C. W. A. as such. They are matters between the member—who is the purchaser, usually—and the seller, who is usually the shipper, and they are matters that come entirely outside of the jurisdiction of the P. C. W. A.

Q. As general manager of P. C. W. A., you do, however, periodically send these savings checks to the members on all of those freight bills, regardless of whether they are prepay or collect freight bills, do you not?

A. Yes. The settlements are made once a month, Mr. Taylor, on or before the end of the month following the

month in which the shipments were forwarded from Chicago,

Q. Mr. Olson, as general manager of P. C. W. A., do you have any special rate or concurrence agreements with any truck lines hauling your freight into Chicago, which rates are less than that published for the benefit of the other shippers?

A. All the rates are published and filed with the Interstate Commerce Commission, but some of the rates
992 are lower than apply to local traffic, which has its final destination at Chicago. The lower rates are assembling rates, which are published, subject to the condition of the freight being loaded in a pool car and reshipped from Chicago by rail to the Pacific Coast or points beyond the Mississippi River, or some such qualification as that.

Q. Are they concurrent rates as provided by Section 409 of the Act?

A. No. The assembling rates are authorized under Section 408 of Part IV of the Interstate Commerce Act.

Q. Back to my original question: Do you have any special rate agreements with, for instance, the Cloverleaf Freight Lines, Incorporated?

A. Not at the present time, no.

Q. Have you had?

A. Yes.

Q. During what period of time, please, sir?

A. Prior to the time the Commission was given jurisdiction over the freight forwarder operations, and at which time forwarders were defined as those who served the general public for compensation.

Q. Was that before May 1942, the date of the enactment of Part IV?

A. I think that is correct.

Q. And you did have a special rate agreement with
993 Cloverleaf Freight Lines, Incorporated, during that period, prior to then, which gave you a rate less than that provided for the general public?

A. Prior to the time that Part IV of the Act became effective, we had contract rates and special rates or concurrent rates, or whatever you want to call them, with many truck lines, on the same general basis as the now regulated forwarders have, or had at that time.

Our arrangements had to be discontinued when the Act went into effect, or shortly thereafter. I think the deadline

was September 1, 1942, if I am not mistaken. Prior to the time that Part IV was enacted, the forwarders, who are now under regulation, maintained special rate agreements with motor common carriers. We did the same thing. We did exactly what the forwarders did. When Part IV was passed, became effective, the authority to continue those special rate arrangements was provided for in Section 409 as to regulated forwarders only, and otherwise, under the provisions of Part IV, the regulated forwarders could not have maintained those special arrangements, which, incidentally, was for a temporary period of 18 months originally, and, no authority having been included in Part IV for such arrangements, insofar as other shippers are concerned, shippers other than regulated forwarders, we were obliged to discontinue that arrangement, because our service
994 is operated on a non-profit basis, and not available to the general public.

Consequently, we did not come under the definition of the forwarders who were granted the special privilege of making agreements with truck lines, common carrier truck lines, for the hauling of freight at unpublished agreement rates.

Q. Then since, as you stated; the effective date of this discontinuance of any of those arrangements was September, 1942; is it your statement that you have not benefitted by any special rates or concurrent agreements since September, 1942, in conection with the trucking lines which have made up the part of your P. C. W. A. service?

A. I think so.

Q. Would that be true with respect to the Interstate Dispatch Company?

A. Yes, I think so. All of the agreements that we had were discontinued—I think I said September first. I think it was August 31, 1942. It was the last day on which those agreements were permitted to be effective.

Q. What truck lines did you have special agreements with as of that time?

The WITNESS: Pardon me?

(The question was read.)

The WITNESS: Prior to September 19th?

Mr. GORDON: Irrelevant and immaterial, objected to on that ground.

995 Mr. TAYLOR: I am speaking of September, 1942, Mr. Gordon, which, as I understand from Mr. Olson's testimony, is a date concerning which there were restrictions as to these agreements.

The WITNESS: There were a large number of truck lines. I would say there were as many as 50 lines in Chicago under agreements, rates, unpublished rates. I am afraid I can't give you the exact number, or all of their names, without referring to my records.

Q. (By Mr. TAYLOR) If you just give me an answer here in connection with these four or five truck lines that I have the names of before me, I think I can relieve you of any further burden, Mr. Olson.

A. We had assembling rates published soon after September 1, 1942, by several truck lines. There are many of the truck lines, however, who used to handle our freight into Chicago, and who still do, that have not yet published any assembling rates.

Q. But, in connection with those assembling rates of which you speak, that you had agreements with, and the trucking companies did, were those rates charged to you less than the rates which were charged the public?

A. The assembling rates?

Q. Yes.

A. No, Mr. Taylor, they were not less than
996 charged the public. They were less than the rates charged on local traffic to the public, traffic which had its destination in Chicago. You are speaking now of the rates after September or prior to?

Q. Yes, after September. We are not interested in what happened before, because we can't be interested in what was not unlawful at that time.

A. I have sort of lost track of the question.

(The question was read.)

The WITNESS: I am sorry. I don't.

Mr. GORDON: I think the question was answered.

Mr. TAYLOR: I don't believe it was answered, Mr. Gordon, for the reason that I started questioning Mr. Olson with respect to concurrence rates or special rate agreements, and then he went into this alternate subject of assembly rates, which indicates to me that possibly, under that sub-heading, there may have been some trucking rates in connection with the assembly, which would revert to the same principle or purpose of my question.

Mr. GORDON: I have no objection to him answering it again. I was objecting to the inquiry.

Exam. WAY: All right. Answer it again.

The WITNESS: We pay published rates. They may be

local rates or assembling rates, but they are published and filed with the Interstate Commerce Commission.

997 Q. (By Mr. Taylor) Let me ask you this—And, as I said before, I will be through, I hope—Have you, since September, 1942, had any special rate agreements, concurrence agreements, if that if what you call them, with any one of the following:

Cloverleaf Freight Lines, Incorporated; Interstate Dispatch Company; Middle States Motor Company; Keeshine Motor Express; Webber Cartage; Cushman Motor Freight; Prime Krema Trucking.

Have you had special rate agreements with any of those trucking lines who performed service for P. C. W. A. to your warehouse consolidating point in Chicago?

A. By "special rate", you mean an unpublished rate?

Q. A rate which gives you, the P. C. W. A., the benefit per 100 pounds, which is cheaper than that which can be received by any other of the public.

A. The rates are all published and filed with the Commission.

Q. That is not my question, Mr. Olson. I wish you would answer me yes or no. You haven't given me a direct reply here to any of these questions.

A. I can tell you that the rates that we pay are published and filed with the Commission. They are either published local rates or published assembling rates.

Q. Is your answer no, or is your answer yes?

998 A. We have no agreement with any truck line at the present time that permits us to receive the benefit of any rate that is not published with the Commission.

Does that answer the question?

Q. That is not my question. Have you had, since September, 1942?

A. We have had no such agreements, no.

Mr. Taylor: Thank you. That is all.

Exam. Way: We will recess for five minutes.

(Short recess taken.)

Exam. Way: All right, gentlemen.

Cross Examination.

Q. (By Mr. Ames) Mr. Olson, you are functioning today, are you not, as an exempt operator under Part IV of the Act?

Mr. Gordon: I object to that as calling for a legal conclusion.

Q. (By Mr. AMES) Let me ask you this. I will have to ask you about 20 questions.

Do you file tariffs with the Interstate Commerce Commission?

A. Pacific Coast Wholesalers' Association files no tariffs.

Q. Do you make reports to the Commission?

A. We report when they ask us for information. We give them what they ask for.

Q. I mean, do you make the customary annual report to the Commission, and the quarterly reports?

999 A. If you are referring to the reports that are required from forwarders subject to Part IV of the Act, the answer is, no.

Q. Under the present type of your operation, isn't it true, Mr. Olson, that the principal thing you have to sell to the members is a saving? Unless you have that saving, you have no place in the scheme of things, have you?

A. We don't sell anything, Mr. Ames, but if the Association did not save money for its members, they would probably discontinue, but some of the members have expressed a desire to continue, having their freight move in their own pool cars, even if they did not save money, because they like the service.

Q. Are they members of your Association?

A. I am speaking of the members of the Pacific Coast Wholesalers' Association.

Q. Isn't the principal inducement that these members have, being in your Association, the saving they make on their freight?

A. Mr. Ames, it is their Association, not mine. They organized it, and they hire me to manage it for them.

Q. Isn't that the principal reason why they have an Association, then, the saving they make on their freight charges?

A. The Association was formed in 1934 and 1935, by Mr. C. C. Colvear, the late president of the Colvear Motor Sales Company, in company with the Chanslor & Lyon Company, Mr. Tom Walch and Mr. Pedder of the Ducommun

1000 Metals and Supply Company, Mr. Ernst of Featherstone's, and a half a dozen other shippers, to control the movement of less-than-carload freight from the East, which up to that time had been moving either by l. c. l. rail service, or in pool cars operated by freight forwarding companies. The reason for the change, as stated to me by

Mr. Colyear, was to enable this group of shippers to control their own freight and not be "kicked around any longer", as he put it, because there was a good deal of juggling of rates, and the forwarder rates were undependable, and they were discriminatory, and these people objected to that and decided, after struggling for a long time to get along with the forwarders, that it was an impossible job, and they would do their own, and if they could save any money at it, so much the better.

Q. Since we have regulation, you will agree, will you not, that the forwarders' rates are not only stable, but that they are forbidden to discriminate?

A. Part IV of the Act provides that the rates must be filed, and that they must be non-discriminatory.

Q. And that they must be adhered to?

A. The rates must be applied according to the tariffs filed with the Commission.

Q. So that motivation would no longer exist since 1942.

Now, based on present conditions, how long do you think the P. C. W. A. would last if you showed a chronic
1001 loss on your members' traffic. Do you think it would last?

A. Mr. Ames, I don't know. It doesn't seem logical that it would last very long, but it possibly could. I wouldn't say whether it would or not. It depends on what these people want to do.

Q. You can't lose on any particular shipment, can you, unless your underlying costs are greater than the rate you charge your shipper? You can't lose unless that happens?

A. We can't lose if we get enough money to pay the cost, and a little bit more.

Q. Will you answer the questions directly, Mr. Olson? You make a close charge, as I understand it, of the published freight forwarder tariff rate, plus three per cent?

A. No, sir.

Q. All right. Tell me what is your gross charge, then.

A. We don't make any charge at all. The members advance to the Association an amount of money which is equal to what they would have to pay a forwarder for the same service, and the Association uses that money to procure for the members the transportation service that they would otherwise get from a forwarder, if they bought it from a forwarder.

Q. I don't want to play with words now. I am simply saying that the money they pay you, your members, the gross sum they pay you is the freight forwarder rate on the shipment, plus three per cent?

1002 A. The members advance to the Association the same amount, based on the same rate that they would pay a forwarder for that same service. They don't pay it to me. They pay it to the Association.

Q. From that point on, then, the member could not suffer a loss, could he, unless the underlying costs of transportation, such as the assembly, concentration, the railroad rate and the distribution, unless the combination of those, plus what they pay you, exceeds that rate they pay in? That is the only way they could make a loss, isn't it?

A. Well, that is just ordinary arithmetic, I think, Mr. Ames.

Q. That is right. It is just ordinary arithmetic.

A. There must be something left after paying the expenses, or there wouldn't be any saving.

Q. Doesn't it stand to reason, with those things known, not only to your members but to your Association and you, that if any of these so-called "losses" or "lemons" get in a car, it is somewhat of an accident in your operation?

Mr. GORDON: Somewhat of a what?

Q. (By Mr. AMES) An accident that one of these losers gets in a car, like these tools you are talking about.

A. I don't know whether they are accidents. They are undesirable. They are not wanted, and we do everything we can to encourage the members to keep that kind

1003 of freight out of the cars. We are not a hundred per cent successful, but we are partially successful in that.

Q. But the fact that you are successful is indicated by your statement that your savings to your members were $100,000.00 over their losses?

A. Yes, sir.

Q. Answering Mr. Taylor about these prepaid charges on these freight bills that we have in evidence, you said you did not call it a freight charge; you call it an advance. Did I understand you correctly?

A. Yes.

Q. Now, whether it is a freight charge or whether it is an advance, or whatever it is, it is the published freight forwarder rate, plus three per cent, isn't it?

A. I think that would be true in all cases today. Sometime ago we used either the forwarder rate or the rail rate, whichever was the lower.

Q. Let us put it today, then.

A. But, as of today, I think almost without exception, and possibly entirely without exception, all of the freight bills are issued on the basis of the rates which the forwarders publish and file with the Commission. That is the measure used for the member to determine his saving.

Q. And whether you call that an advance, or whether you call it a freight charge, or whether you call it a
1004 prepay charge, it is exactly the same in dollars and cents as he would pay if he hired a freight forwarder to do his work?

A. Exactly.

Q. Isn't it true, Mr. Olson, that in the operation of your business out here, when these prepaid shippers, that is, prepaid consignors in the East, route stuff P. C. W. A., isn't it generally true that they do so on the instructions of your members?

A. Yes, sir.

Q. And you have rubber stamps, I believe, that reduce those instructions to printed form?

A. Generally speaking the instructions are contained in standing instruction letters which are first filed by the member with the shipper, and then, as individual purchase orders are issued and sent to the shipper, the rubber stamps are used on the purchase orders, and the stamps refer to the standing instructions, and ask that they be complied with. That was the usual method. Some members handle it a little differently. They might write the instructions out on the purchase order, or they might write a separate letter attached to is, but usually, and in the majority of cases, the method just described was followed.

Q. In any event, the consignor is told to route P. C. W. A.?

A. The consignee of the shipment asks the shipper to route it so as to move in a P. C. W. A. pool car at Chicago.

1005 Q. Do your members route all of their freight forwarder traffic through P. C. W. A.?

A. I don't believe so.

Q. How do they select what they want to route through P. C. W. A. and what they want to let the regulated forwarders have?

A. Well, I don't know just what method they use. Some of them, for various reasons, personal friendship, perhaps, will route some business in the forwarder car, because the forwarder rate is cheaper than the P. C. W. A. costs. They may have other reasons. I don't know what is in their minds when they do it.

Q. Well, if the forwarder rate is less than the P. C. W. A. cost, that would be losing business, wouldn't it, so far as P. C. W. A. was concerned. That would be one of those cases where they lost?

A. And for that reason, the member would logically have that shipment come out in a forwarder car, because it would cost him less. That is only good business.

Exam. WAY: If you use the forwarder rate, how can you have a forwarder rate that is higher than your rate?

The WITNESS: Well, Mr. Way, it is not our rate. We simply use the rate published by the forwarder as a measure of securing an advance of funds with which to pay the cost of transportation and overhead. If the forwarder rate, as published, happens to be less than our cost
1006 of transportation plus overhead, there is a loss resulting, and the member must bear that loss. Consequently he tries to hold his losses down, eliminate them, if possible, so, rather than send such a shipment in a P. C. W. A. pool car, he would route it either for movement via regulated forwarder, or for movement in l. c. l. rail service, whichever is to his advantage.

Q. (By Mr. AMES) Well, to put it more simply, he uses you where he can make a saving, and he uses the regulated forwarder where he can't. Isn't that the story?

A. Generally speaking, it is.

Q. Why did you start adding this three per cent to your freight bills?

A. That was done to complete the equalization.

Q. To make it mechanically the same as the freight forwarder would charge?

A. Unless the three per cent was added to the charges, computed at the forwarder rate, the total amount of the bill would not be the same as the amount of the freight bill would be if the same shipment had been handled by a forwarder or by a railroad.

Q. Is that because the forwarder charges his freight rate, and then adds a tax to it? Is that why you added that?

A. The forwarder is obliged, under the Internal Revenue Act, to add three per cent to his charge and remit the money to the Internal Revenue Department.

1007 Q. So what the forwarder does is apply the rate of $2.50 a hundred, plus three per cent, making his total $2.57 and a half, which includes the transportation rate and the tax?

A. That is the effect of it, yes.

Q. So when you deal with your members, in order to effect a mechanical equality, you charge them $2.50, plus three per cent, only you don't call a tax, isn't that right?

A. That's correct, and we don't call the rate appearing on there a rate, either.

Q. You don't call it a rate. You put it on the freight bill, though, don't you?

A. The figure represents what would be paid to the forwarder as a rate, and the amount of three per cent represents what the forwarder would collect as a tax.

Q. Now, the forwarder gives his three per cent to the government. Why don't you give yours to the government?

A. We pay taxes.

Mr. GORDON: Objected to as irrelevant and immaterial.

Mr. AMES: No, it isn't immaterial.

Exam. WAY: No. Answer the question.

Q. (By Mr. AMES) Why is it that you do not pay yours to the government?

A. We pay taxes to the transportation companies that render service to us, on the basis of three per cent. The forwarder doesn't pay taxes to the transportation company.

1008 Q. Why not?

A. The forwarder is exempt under the Internal Revenue Act from paying taxes to transportation companies, but he is obliged, under the Act, as I understand it, to collect a transportation tax from his patrons, remits that to the Internal Revenue Department.

Q. So that the gross amount upon which you start to compute savings to your members is a figure representing the published rate of the freight forwarder, plus an arbitrary addition of three per cent. That is where you start to compute your savings, isn't it?

A. That is the beginning, yes.

Q. Apart from the fact that that three per cent simply makes your saving look more attractive, why do you do it? Why do you collect it and give it back to him?

A. Because it is an exact measurement of the saving. As I explained, Mr. Ames, the freight bill of the forwarder, including the tax, amounts to so much money. In order to measure the saving and secure enough funds to pay for the transportation service and the overhead, it is necessary to put out a bill on the same basis, with the same amount, so that after the member has advanced the amount which he would have paid the forwarder, and he gets his check back showing his savings, he has a definite measure. I don't know how I can make it any more clear.

1009 Q. You couldn't, from your standpoint, but you still have not cleared it from mine.

A. I am awfully sorry, Mr. Ames. I would like to answer your question, if I could understand it.

Q. To me, Mr. Olson, it is just a little matter of bookkeeping which pads up your refund and makes it look more attractive, because you take it in and then you give it out again. You haven't explained to me yet why I am wrong in that concept.

A. I am afraid I can't explain it any better.

Q. You can't do any better than you did?

A. No, I don't think I can.

Mr. AMES: We will leave it there.

Exam. WAY: Do you return all of this three per cent, or do you retain a portion of it?

The WITNESS: The entire amount received is used to pay for transportation, which includes transportation tax. We pay taxes on all transportation that we receive. The railroad freight bills included in these exhibits, beginning with—oh, somewhere around 40, and running up to around No. 50, show that the three per cent transportation tax was paid by us to the railroad on the carload shipment.

Exam. WAY: All right, but now then, that three per cent tax, doesn't that enter into the computation in paying the varying cost of handling and distribution of the

1010 various spenders, of paying you your part?

The WITNESS: Mr. Way, if the three per cent were not added to the bill, the net savings to the member would obviously be less. By the same token, if there were no transportation tax at all, if the tax were abolished, the members would be receiving approximately 97 per cent of the amount of savings they would receive today. It wouldn't be exactly that, but it would be approximately that, and I am wondering if that—

Exam. WAY: No, that is not the point I am getting at.

You receive three per cent. That is based on the total charge. Now, included in all of these figures is a sum which is, say, 15½ per cent for your administration.

The WITNESS: That is not a tax, though.

Exam. WAY: Isn't your fund increased by the addition of the three per cent, that is, applying the percentage to that three per cent?

The WITNESS: Would you read that, please?

(The record was read.)

Exam. WAY: Applying the amount resulting from the addition of the three per cent?

The WITNESS: Well, of course the fund in the trade account is three per cent higher than it would be if there were no three per cent added.

Exam. WAY: All right.

1011 The WITNESS: And the entire amount represented by that three per cent is not paid out as expense. There are some items of cost that are not taxable, one of which you mentioned was the cost of administration. All transportation service is taxable. We pay the tax for that transportation service, and that is the inbound charges to Chicago, whether they be by rail or by truck or by forwarder, and we pay the railroads the three per cent tax on their charges to haul the car from Chicago to the car distributing port. Then we pay taxes of three per cent to the cartage companies that make the deliveries for us, or the carrier that hauls it beyond.

Exam. WAY: Yes, and that three per cent works back into all of those costs.

The WITNESS: Yes, but the three per cent—the cost of administration is not taxable by three per cent, and insurance is not taxable by three per cent. We pay an insurance premium, but we don't pay a three per cent tax on that. There are probably other items I can't recall offhand.

Exam. WAY: All right.

Proceed, Mr. Ames.

Q. (By Mr. AMES) The commission that you receive is based upon a certain percentage of your gross receipts from your members, is it not?

A. I don't understand what you mean by "commission."

Q. Well, you are allowed a certain per cent for administration?

1012 A. The Association pays me so many cents a hundred pounds to manage the Association.

Q. So many cents a hundred pounds?

A. Yes. It is not a percentage. It is cents per hundred pounds.

Q. The only taxes that the members of your Association pay the government are those which accrue on the railroad carload rate and on the assembly or distribution rates, if any?

A. They pay tax on every transportation service.

Q. Right. And those are the transportation services which they use through you, the inbound assembly service, the railroad haul to the Coast, and the distribution?

A. Yes.

Q. So they pay tax on those three transportation units?

A. The tax is paid by the Association and charged against the cost of handling the particular shipment, so indirectly the member pays the tax.

Q. If they used the ordinary regulated freight forwarder, they would be paying three per cent on the freight forwarder rate, would they not?

A. That's correct.

Q. And that three per cent on your freight forwarder rate would be higher than the three per cent on the combined transportation units of assembly, line haul and distribution?

A. Well, it would be higher or lower, depending on
1013 whether the shipment realized a saving or a loss.

If there was a saving, the three per cent would be less. If there was a loss, it would be more.

Q. The ordinary shipment you handle is a shipment that you handle out of savings, isn't it?

A. The majority of the shipments out of savings.

Q. The great majority?

A. Oh, yes, by far.

Q. Isn't it also true in that great majority, that the three per cent tax on the forwarded rate from the point of origin to ultimate destination would be greater than three per cent computed on the assembly end, the line haul and the distribution?

The Witness: May I have that question again, please?

(The question was read.)

The Witness: I believe I have said yes to that question about ten or twelve times.

Q. (By Mr. Ames) No, you haven't. What did you do about this tax when you were dealing with this non-member patron of yours known as the United States Maritime Commission? Did you charge them three per cent?

A. They instructed us—the California Shipbuilding Corporation instructed us not to add three per cent to the freight bills on shipments that moved on government bills of lading.

1014 Q. Did you observe those instructions?

A. Yes.

Q. On other shipments moving on non-government bills of lading, did you add three per cent?

A. Yes.

Q. The freight forwarders came under Federal regulation in May of 1942. Prior to that time you conducted yourself exactly as a freight forwarder did, and you regarded yourself as a freight forwarder, didn't you?

Mr. GORDON: Just a moment. Object to that as calling for a legal conclusion, argumentative.

Mr. AMES: All right. I will ask it in another way.

Q. (By Mr. AMES) Prior to regulation, did you conduct your operations precisely as those of a freight forwarder are conducted?

A. The physical operations of the Pacific Coast Wholesalers' Association have always been the same as the physical operations of a freight forwarder, and when I say "the same", I mean substantially the same. I am not comparing the Pacific Coast Wholesalers' Association operation with that of the Universal Carloading and Distributing Company or with the Acme Fast Freight, or with the National Carloading Corporation, or any other extremely large freight forwarder. I am comparing it with the freight forwarders who handle generally the same or ap-

1015 proximately the same volume of business as is handled in the P. C. W. A. pool-cars. There is a difference in many respects between the operations of the large forwarders and the small forwarders, simply because of their size.

Q. It is a difference that grows out of size, rather than the mechanics of the operation, isn't it?

A. The large forwarders have an advantage because of their volume, in which they do things differently, from a physical standpoint, than the small ones are obliged to do it.

Q. But they still, apart from that question of size difference, handle their traffic the same as you do, don't they?

A. In all essential respects, Mr. Ames.

Q. Let us take something that they do differently. Let us take a less carload shipment from Cleveland, Ohio, destined to Los Angeles. Do you bring that into a concentration point?

A. We bring it into Chicago, and the Universal consolidates it right at Cleveland. There is that difference in the physical operation.

Q. But you both concentrate it, don't you?

A. Oh, yes.

Q. And you both give it to the railroad to haul to the Coast, don't you?

A. Yes. That part of the service is the same.

Q. And you are both distributing when it gets out here?

A. Yes, sir.

1016 Q. Apart from the fact that the Universal may have more traffic than you do—I hope—and more assembly points, what difference is there in the mechanics of running their business and running yours?

A. I don't know what the mechanics of running the Universal are. I am familiar with the mechanics of running a small forwarder.

Q. Can you tell me a motion that you go through in handling a shipment from York, Pennsylvania, to Los Angeles? Can you tell me a motion that you go through that a regular freight forwarder does not have to go through?

A. The motions are the same with respect to the forwarders, whose operations are the same size as our operations.

Q. And who handle traffic between the same points?

A. Yes, of course.

Q. Prior to regulation, isn't it true, Mr. Olson, that you undertook to have joint arrangements with trucks the same as the freight forwarders did?

Mr. GORDON: That is objected to as irrelevant and immaterial. It relates to material that is not in evidence.

Mr. AMES: It was referred to in direct testimony.

Exam. WAY: It has been referred to, and it is the Commission's desire to develop all of the facts in connection with the forwarders in this matter.

Mr. GORDON: If it is going to be of any aid to the

1017 Commission, I withdraw my objection.

The WITNESS: We believe, prior to the time Part IV was enacted, we had a right to do the same things that the forwarding companies did, and, insofar as it was possible for us to do so, we did the same things that the forwarders did in order to hold our costs down.

Q. (By Mr. AMES) Didn't you base that idea on the principle that you were operating the same as a freight forwarder? Isn't that why you reached that conclusion?

A. The freight forwarders' contention was that they were motor carriers.

Exam. WAY: You haven't answered the question yet. Read the question, please.

(The question was read.)

Q. (By Mr. AMES) You can answer that yes or no, and then make any explanation you care to. It does admit of a yes or no answer.

A. The answer is, yes, and I would like to explain it.

Q. All right.

A. That in the year 1935, when Part II of the Interstate Commerce Act became effective, the freight forwarders filed applications with the Commission seeking either a certificate of public convenience and necessity to operate as a motor common carrier, or a permit to operate as a contract carrier by motor vehicle, or, if they couldn't
1018 get either one of those, a license for authority to operate as a broker of motor truck transportation.

At the same time—or, soon thereafter—forwarders filed with the Commission so-called "joint tariffs" naming what they called "joint rates" between motor carriers and the forwarders.

With the tariffs were filed concurrence forms executed by the motor carriers authorizing the forwarders to publish and file for the account of such motor carrier any traffic, naming any rate. It was a blanket authority contained in the concurrence forms.

Up to the time that Part II became effective, all shippers, not only forwarders, but all shippers all over the country, contracted with motor carriers for transportation service, or made what have been referred to as "agreement rates", and, when Part II went into effect, shippers generally were required to pay published tariff rates, but the freight forwarders did not do so; they used this other means that I have described, to continue paying their agreement rates, and called them "divisions" instead of agreement rates, divisions of such joint tariffs.

Since the operations conducted by the Pacific Coast Wholesalers' Association for its members on a non-profit basis were in all essential respects the same operations as conducted by freight forwarders who served the general public for compensation, they followed the lead of
1019 those forwarders, filed the same kind of applications, the same kind of tariffs and the same kind of concurrences. The only essential difference between the

Pacific Coast Wholesalers' Association and a forwarder serving the general public is just that the forwarder did serve the general public for compensation, and the Pacific Coast Wholesalers' Association served only its members at cost.

Now, coming to the time between 1935, when the Motor Carrier Act was made effective, and up to the time that Part IV was enacted, in May, 1942, the forwarders contended on the one hand that they were motor carriers, and made joint rates with actual motor carriers. They claimed that Part II authorized them to do so, but the rates named in those joint tariffs which the forwarders filed with the Commission, were not adhered to by the forwarders, and they claimed that they were not under the Commission's jurisdiction, and did not have to charge published tariff rates. That is a matter of common knowledge in transportation, and cannot be disputed.

Q. Now you are talking about the interim period between the regulations of trucks and the regulations of freight forwarders, between 1935 and 1942.

A. That is correct.

Q. During that period, what did you do about it? Did you have a rate that you published, and did you get a concurrence from the motor carrier in that rate?

1020 A. Yes.

Q. In other words, you published a through rate from Cleveland to Los Angeles, the same as a forwarder did?

A. We copied the forwarders' tariff, and filed it with the Commission.

Q. So you had on file with the Commission at that time a published tariff in which the motor carriers concurred?

A. I am not certain, Mr. Ames, but I think that tariff that was filed was one of your tariffs, with the cover torn off, and a new one put on, with our name on it.

Q. But it was your tariff. You filed it as your tariff.

A. It was filed as our tariff, yes.

Q. During that period, from 1935 to 1942, you were only serving your members, weren't you?

A. Yes. We filed the tariff to accomplish the same purpose that the forwarders did, and that was to get low truck rates.

Q. That goes beyond my question.

A. Pardon me.

Q. The question was simply this, that in the period 1935 to 1942, you served only members of the Association.

A. We have served members of the Association from the beginning of the time that the Association started to operate, which was just before the Motor Carrier Act was enacted, a matter of six months, or something like that.

Q. So that before the regulation of the freight
1021 forwarders, and since the regulation of the freight forwarders, you have confined your services to members of the Association?

A. The services of the Association have never been available to the general public. It has always been for the members of the Association.

Q. When Congress undertook to speak on the subject and regulate the freight forwarders, you decided not to be a regulated freight forwarder, didn't you?

A. Yes.

Mr. GORDON: Object to that.

Mr. AMES: I don't see where the objection is, Mr. Examiner, unless I am made to ask 20 or 30 questions where one would do. The facts are plain.

Exam. WAY: What is the basis of the objection?

Mr. AMES: He answered it, I believe.

Didn't you answer it, that you decided you would not be a regulated forwarder?

The WITNESS: I didn't decide it, no. The directors of the Association decided it, but that was the decision.

Q. (By Mr. AMES) That was the decision?

A. That the Association—I believe it was in answer to a letter or a telegram from the Commission, inquiring about the filing of tariffs, or the filing of applications for permits, or something like that, and the answer was sent in the telegram to the Commission, telling them that
1022 the Association did not come under the provisions of IV of the Act, and therefore was not filing any applications for permits or tariffs, and that the former "tariff", so-called, was allowed to expire.

Q. Prior to regulation of the freight forwarder, I assume you were making the same settlements with the members as you are making now, that is, you gave them the same savings out of charges they paid in?

A. The savings were much greater at that time than they are now.

Q. Well, but there were savings?

A. Yes. They were about twice as much then as they are now.

Q. If you had come under regulation at that time, and had filed a freight forwarder tariff, that little game would

have been stopped, wouldn't it? You would have had to publish your rate, charge it and keep it?

A. We could have continued also to enjoy the—

Mr. GORDON: Just a moment, please. Object to that as purely argumentative. What would have happened had they decided to engage in the forwarding business, or what results might have flowed therefrom, I submit is irrelevant and argumentative. Objected to on that ground.

Exam. WAY: Sustained.

Q. (By Mr. AMES) If you had filed a freight forwarder tariff after regulation, you would have expected to
1023 apply the tariff rates, wouldn't you?

Mr. GORDON: That is objected to for the same reason, speculative, argumentative.

Mr. AMES: Mr. Examiner, I don't think that is objectionable.

Exam. WAY: Answer the question.

The WITNESS: Is there a question?

Mr. AMES: Yes.

(The question was read.)

The WITNESS: I presume so, Mr. Ames.

Q. (By Mr. AMES) You wouldn't violate the law knowingly, would you? You stated that before regulation and after regulation, you served the same type of customer, that is, a member. Can you point out any mechanical difference in the way you conducted your service before regulation, and since, any mechanical difference now?

A. I don't know of any mechanical or other difference of any substantial nature. The operation, the accounting is handled in almost the same way today as it always has been.

Q. There was a witness on the stand this morning—I believe his name was Hedder. Am I right?

A. Pedder.

Q. Who said that he had had no experience in dealing with these shipments direct to members, customers, and that on that kind of a transaction he wouldn't know
1024 whether he could get a refund or not, he would call you up about it. Why did he say that? Who determines this policy about where they get refunds and where they don't? Do you do it?

A. Just what—I don't determine any policies of the Association.

Q. Well, this shipment was a shipment from the Ajax Machine Company, or something like that, to a customer of one of your members at a point in Arizona, and he used

P. C. W. A. service on it. The P. C. W. A. member's name did not appear on any of the shipping papers, yet a refund was paid on that shipment.

Now, I asked Mr. Pedder what he did in cases like that, and he said he never had a shipment like that, and if he had, he would call you up about it.

Do you determine whether they get refunds on prepaid shipments? Who does determine that?

A. I think what he meant was that he would call up the office, call my office, and tell them that he was entitled to the refund, because it was his shipment.

Q. Oh, he would call you up and tell you to give to him?

A. I think so. I think that is what he meant.

Exam. WAY: I think we are getting into the realm of speculation, as to what might be done.

Mr. AMES: That leads to another question, Mr. Examiner.

Q. (By Mr. AMES) Is it your practice, in the operation of your business, to effect savings or reimburse your
1025 members on account of savings in connection with shipments made to their customers direct? Is it your policy to do that?

A. It is the practice of the Association to handle freight in its pool cars, which goes to customers of members, and the member who caused the shipment to be made in the car receives the saving.

Q. That would be in a case where—I am just using Colyear Motor Sales, because it is the first one that comes into my mind—they would direct some manufacturer in the East to make a shipment direct to a customer of Colyear, Colyear's name not appearing on the shipping papers at all, and they would be reimbursed on account of savings on that shipment, as I understand it, if it moved P. C. W. A.?

A. Yes. We had one, Mr. Ames, in an exhibit just a little while ago. Mr. Taylor asked me about a shipment that went to Hinshaw Supply Company—I think it was—in San Francisco, and the money was paid to Colyear Motor Sales Company, two dollars and something.

Q. And you had another one, I believe, that went to Idaho Falls, and was paid to —

A. Strevell-Paterson.

Q. Strevell-Paterson?

A. That's right.

Q. So that under your present plan of operation, if Sears & Roebuck, or one of your members here, made a

1026 shipment, a refund would be available to Sears Roebuck on shipments to all customers direct, if they used P. C. W. A.?

A. Sears Roebuck is not a member of the Association.

Q. I say, if they were, that would be the result, under your present practice?

A. I don't think Sears & Roebuck could get into the Association. They are retailers.

Q. Well, you had a pretty elastic constitution last time I read it but, if they were in your association, under your present plan you could make refunds to all of their customers if they used P. C. W. A.?

A. You mean, refunds to Sears Roebuck?

Q. That's right.

Exam. WAY: Let us confine it to Colyear Motor Sales Company.

Mr. AMES: He has already admitted that he does it with them.

Exam. WAY: They have agencies all over the country.

The WITNESS: I can't tell you what would happen, Mr. Ames. It is up to the Association, what they want to do about it. We don't have Sears Roebuck & Company as a member.

Q. (By Mr. AMES) Under your present plan, any shipment made to a customer of Colyear Motor Sales, for example, is a refundable transaction on savings if they use the services of the P. C. W. A.?

1027 A. If there is a saving, it goes to Colyear Motor Sales.

Q. Notwithstanding their name does not appear on the shipping papers at all?

A. That's correct.

Q. You appeared in the Transamerican case, didn't you?

A. In 1939?

Q. No, in the A. & D. case.

A. Are you refering to the hearing involving the legality of a definition of the term "freight consolidator", as published by the Transamerican Freight Lines, Incorporated?

Q. It was a case where they published a tariff naming an 85 per cent basis of rates available to freight forwarders, and all who used their services under like conditions.

A. That case was heard in Chicago in June, 1933, before Examiner Hayden, and I was a witness.

Q. You took the position at that time, did you not, that the P. C. W. A. was entitled to the benefit of that reduced basis?

A. We certainly did.

Q. Are you sure that hearing was in 1933?

A. To the best of my recollection, it was in June, 1933. Mr. Gordon has a copy of the transcript over there (indicating).

Exam. WAY: Here it is, with the decision on it (indicating).

Mr. AMES: It couldn't have been 1933, because that
1028 was prior to the regulation of motor carriers.

The WITNESS: Pardon me. I should have said '43, Mr. Ames. I was ten years off.

Q. (By Mr. AMES) And you took the position in that case that whatever basis of rates was made available to freight forwarders should also be made available to P. C. W. A.?

A. And I still think so. I can't see any reason why they shouldn't be.

Mr. AMES: That is all I have, Mr. Examiner.

Exam. WAY: Mr. Gordon?

Mr. GORDON: I have no question.

Exam. WAY: Mr. Taylor?

Mr. TAYLOR: I just have two questions, Mr. Olson, please.

Re-direct Examination.

Q. (By Mr. TAYLOR) Going back to the subject of one of the questions raised by Mr. Ames, referring to Exhibit No. 51, on which is recorded P. C. W. A. stamps, which I understand you, as general manager, furnished the membership, this second imprint appearing on Exhibit No. 51, which shows, "Ship According to Standing Instructions. Mark and Ship to: Pacific Coast Wholesalers' Association, 3710 South California Avenue, Chicago, Illinois: Sub-Mark-4:" is that the stamp that you send out, as general manager, to the membership at large, for use when they have shipments to move via P. C. W. A. for a customer of theirs?

1029 A. Yes.

Q. Then is it not a fact that it is a common practice for most of your members to have shipments from time to time shipped direct to their customers who are not members of the Association?

A. It is a common practice, in that they all do it when they have occasion to and desire to. There is no attempt made to limit the practice. They are free, as far as the Association is concerned—any member is free to send shipments for their customers in the pool cars of the Association, so long as they let us know, one way or another, who

those customers are, so we will know who to give the credit to.

Q. And, as you said before, you handle the accounts, the savings, in the same manner as if those shipments had gone directly to the member?

A. Yes. May I explain, Mr. Taylor?

The reason for this method of handling is this: We had, in the Chicago hearing, a shipment to a garage on 115 Battery Street, San Francisco—I have forgotten the name of the garage—that shipment was ordered by Chanslor & Lyon Company in San Francisco, and their purchase order directed the factory— which I think was the Walker Manufacturing Company at Racine, Wisconsin, to send the shipment to this garage rather than sending it to Chanslor & Lyon Company's store at 740 Polk Street, which is
1030 up in the other end of the city. The reason for it was to save the second cartage cost from 750 Polk Street down to 115 Battery Street in San Francisco, and to get the shipment delivered there quicker.

Q. So it is twofold in purpose, to expedite service and to effect economy, is that the situation?

A. Yes. Had the shipment gone to Chanslor & Lyon Company, and been delivered there, they would have simply put it on another truck and sent it down to 115 Battery Street, and they would have lost time and spent more money than they needed. The Walker Manufacturing Company invoiced the shipment to Chanslor & Lyon Company at 740 Polk Street, San Francisco. Chanslor & Lyon paid Walker Manufacturing Company for the goods, and Chanslor & Lyon Company sent their bill in turn to the garage, and I suppose the garage paid them.

Q. And, by effecting economy, by reason of exempting the necessity of the second cartage haul there, of course that increased the savings of the member on that particular shipment, did it?

A. No. In that particular instance the saving is exactly the same, because the delivery at 115 Battery Street cost the same as the delivery would have cost at 740 Polk Street, but the member saved a second haul. He saved the expense of shipping it over again from his own place down to delivery.

Q. That is the point of the question?

A. But, so far as the P. C. W. A. saving is con-
1031 cerned, the amount we paid Chanslor & Lyon on that shipment is exactly the same we would have returned to them, had the shipment gone to 740 Polk Street.

EXHIBIT 23

1

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

LOS ANGELES DATE 6-27-46 REF. NO. CLA 1869-3

YALE & [illegible]NE MFG CO
PHILA PA

CONSIGNEE

DUCOMMUN METAL SUP CO
LOS ANGELES CALIF

PLEASE RECEIPT AND RETURN

E
R

6-8-46

DATE OF SHIPMENT

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
20	CS PULLEYS BLOCKS OR CHAIN HOISTS W GEARS RAT OR WORMS	2300			
10	CTNS DO	670			
		2970	340		
	PD INTO CHGO		136		
	BALANCE		204		60 59
			3%		1 82
					62 41

PREPAID

JUL 3 1946

C. K.

PAYMENT
JUL 17 1946
PACIFIC COAST WHOLESALERS ASS'N.

Payable Within 96 Hours

B & O RR CO W/B 115215 6-8-46

REMIT DIRECT TO
PACIFIC COAST WHOLESALERS ASS'N.
108 WEST SIXTH STREET
LOS ANGELES, - CALIF

Q. And then been retransferred from 740 Polk Street to the garage?

A. That would have been at their expense, and we would have had no part in that part of the transaction. Our transaction was finished when we delivered the shipment to its first billed destination, or, had the shipment delivered at that point, I should say.

Q. I thought you said in your first reply that one purpose of having it that way was to save the member the cost of the second truck haul. Didn't you say that?

A. Yes. The member does save the cost of the second truck haul. You see, this is an association of members, and the members operate it for their own benefit, and they use it to the maximum advantage, and they want to take advantage of that possible service.

Q. We have two answers to the question, then, don't we?

A. You can have them both.

Q. You say it wouldn't cost the member any more to have the freight merchandise hauled twice at destination than it would to have it hauled once. Do you mean that?

A. If I said that, I was wrong. I should have said—I thought I said that the money received by the Pacific
1032 Coast Wholesalers' Association, and the saving returned, is exactly the same in one case as it would be in the other, but, by having the shipment go direct to the customer, the member himself saves the second cartage cost, or the reshipping cost.

Q. That is what I thought, and that answers my question, thank you. Now, with regard to Exhibit No. 48, I have one more question to ask.

That exhibit contains a recapitulation, as you will notice, of all shipments handled by the Association for the months of December, 1944, and December, 1945.

The question is: Are those months generally representative of business handled by P. C. W. A. during other months in the years 1944, 1945 and 1946?

A. Do you mean, would that represent an average for twelve months?

Q. Yes. Would your comparison be somewhat the same? Would the volume of business be somewhat the same, or would there be big differences, for instance, between the collect shipments and prepay, or the amount of savings, and so forth?

A. There are peaks and valleys in the volume of traffic, but I think, for practical purposes, you can assume this to

be typical of any other month in the year. There would be some fluctuation, but it would not exceed 10 or 15 per cent.

Q. You have no objection, then, to these particular months going in as being representative of your general
1033 average for the various months of those years?

A. Me, personally?

Q. Well, you as general manager for the Association.

A. No, I have no objection. These statements were made in my office by Mr. Anderson in June and September last year, and I helped him make them.

Mr. TAYLOR: Thank you. That answers the question, then.

Exam. WAY: Is that all you have, Mr. Taylor?

Mr. TAYLOR: Yes, I believe that is all, Mr. Examiner.

Mr. GORDON: I have nothing further.

Re-cross Examination.

Q. (By Mr. AMES) Would it be fair to say that this Exhibit 48 is typical of your operation, that is, that they are typical periods?

A. I think it is fairly typical, Mr. Ames. There is naturally some fluctuation from month to month on the part of one member's business, on the part of a total, or as to the number of prepaid and collects, or as to the volume of saving or the weights, the number of shipments, and such, but they are as good as any other months you can select, if you are going to limit your check to one month.

Q. On the question of typicality, you wouldn't challenge these exhibits as being non-typical?

A. As I said to Mr. Taylor, I don't think that the fluctuation one way or the other in any respect would ex-
1034 ceed 10 or 15 per cent. Certainly it is within 75 per cent of an average, in my opinion.

Re-direct Examination.

Q. (By Mr. TAYLOR) So if your collect shipments, for instance, in a subsequent month, would go down, the chances are your prepay shipments would go down in number also, and conversely, if the collect shipments increased in volume, then your prepay probably would increase in volume, isn't that so, for each member?

A. Well, so far as I know, I will have to say, yes. I don't know just what causes affect the volume of this business, because there are several classes of trade involved.

Exam. WAY: You don't question that they are representative, do you?

Form No. 1601 0057641

COPY ✓ Exhibit 25

FREIGHT BILL

Pro. No. OSL 591-1

Date 6/8/45

Carrier PACIFIC COAST WHOLESALERS ASSOCIATION

Consignee STEVELL PATERSON HDWE CO

P.O. BOX 1045

Destination SALT LAKE CITY UTAH

Shipper R M HOLLINGSHEAD CORP

Origin CAMDEN N J

Date of shipment 5/21/45

Invoice No.

DESCRIPTION	WEIGHT	RATE	PREPAID FREIGHT
2 CS BHK OR SHK ABS FLUID	58	3.2¾	1.88
6 CS METALLIC CEMENT NOI	126	3.5¾	4.46
	184		6.34
		3% TAX	.19
			6.53

RECEIVED
PAYMENT
JUN 15, 1945
PACIFIC COAST WHOLESALERS ASS'N

CLIPPER CARLOADING CO PBO A 50096 5/18/45
206

We certify this to be an exact copy of the original document.

PREPAID

Per R. M. HOLLINGSHEAD CORPORATION

TRAFFIC MANAGER

639

1043

1043

The WITNESS: I said they are representative. I said that five or six times.

Q. (By Mr. TAYLOR) You say they are representative. Is that the final answer?

A. In my opinion, it is.

Mr. TAYLOR: Thank you. Nothing further.

Exam. WAY: You are excused.

(Witness excused.)

Exam. WAY: Does anybody else have anything to offer? Do you have anything further, Mr. Taylor?

Mr. TAYLOR: Nothing further.

1035 Exam. WAY: Mr. Ames?

Mr. AMES: I will have some questions of Mr. Anderson, but I would like about a five-minute recess, if we could.

Exam. WAY: All right.

(Short recess taken.)

Exam. WAY: All right, Mr. Anderson.

H. B. ANDERSON, resumed his testimony as follows:

Cross Examination.

Q. (By Mr. AMES) Mr. Anderson, would you turn to your Exhibit 41, please, sir? Will you turn to the letter there dated July 29, 1946, which is the last sheet of the exhibit?

A. I have it.

Q. I notice on this exhibit, as on other exhibits of a similar nature, that in one instance the revolving fund is subtracted from these savings, and in another instance, on the same sheet, it is added.

Did your investigation teach you the significance of that, why they add it in one place and subtract it in another?

Q. They subtract the revolving fund for the current month, and they return what was subtracted for the same month the previous year, in order that they keep the revolving fund on a current basis with what is actually being handled for each member.

Q. Then in this particular illustration, they owed 1036 to the revolving fund for June, 1946, $69.71—

A. And they only deducted in June, 1945, $3.99 for that purpose.

Q. So in this statement of July, 1946, they gave them credit for payment they had made into the revolving fund the preceding year, in June?

A. That's right.

Q. Turn to your Exhibit 48, please. In every instance here you have shown a savings paid to members, and you have, in all of these entries, shown some saving in each one, that is, the two years. Did you find in any of your research work in the records that there had been any losses to any of these companies, that is, for any month?

A. I did not find where a member for an entire month would suffer a loss. There were shipments, individual shipments on which the member have sustained a loss because of the way it was shipped, and the cost involved, of getting it to the assembly point and distributing it from the freight bulk point, but in such cases it was my understanding that if that particular commodity, because of the rates and costs, resulted in a loss, that the member was so advised, and, generally speaking, they discontinued routing such traffic through P. C. W. A. service.

Q. The overall picture, as you found it, was a consistent savings of some amount, greater in some cases than
1037 in others, of course?

A. That is right.

Q. But it was a consistent saving?

A. When you compare the total number of shipments handled for a member, I think it would be proper to say that the number of shipments on which a loss was sustained would be small.

Q. Would you turn to Exhibit 50? I have particular reference to this column headed "Area Served". In your investigation, did you make any inquiry as to whether it was a common practice of the members of this Association to claim refunds or savings on shipments made direct to their customers, or did you find that was an isolated practice, or did you make any inquiry about it at all?

A. A review of some manifests of carload shipments indicates that it is not uncommon for shipments to be handled for customers of members.

Q. And that savings are paid on those shipments?

A. And the savings on those shipments went to the member.

Q. Did you make any inquiry at all on the matter of cash contributions? Did you find in your investigation that any of these members had made cash contributions to the Association?

A. In all of my investigations of this Association, the only reference I have ever found to what may be termed a "cash contribution" toward the cost of operating

1038 the Association were the ones put up in the early days of the formation of the Association for the purpose of getting it started. Since that time there have been no references made, or anything developed, that would indicate any of them have made any further cash contributions.

Q. Does your investigation lead you to believe that the benefit secured by the members consists of getting something refunded to them, some money refunded to them out of a freight rate that they would pay to a regulated freight forwarder if they used his service?

Mr. GORDON: Just a moment. I am going to have to object to that question as calling for a legal conclusion, and argumentative.

Mr. AMES: I will reframe it. I think it is a bad question, anyhow.

Q. (By Mr. AMES) Did you find, in your investigation, where any payments had been made by checks of the Association to members, other than those representing savings in freight charges?

A. None.

Mr. AMES: The question before was badly put. That is all I have.

Mr. GORDON: I have no questions.

Mr. TAYLOR: No questions.

Exam. WAY: If there are no questions, you are excused.

(Witness excused.)

1039 Exam. WAY: Does anyone else have anything to offer?

Mr. GORDON: I did not plan on putting in any further evidence, except as it might be desirable to clarify any matters that the Examiner might wish further clarification upon. I have read the transcript of the previous hearings at Philadelphia, Cleveland and Chicago, and recall that some question was raised by your Honor at that time, that the matters that were testified to at those hearings had not been fully developed, an dif there is any such question of doubt in your Honor's mind, I would be very glad to put on Mr. Olson, or other witnesses who might develop the evidence further.

Exam. WAY: I think all of the matters which may not have been fully developed at the prior hearings have been amplified at the hearing here to such an extent that it seems to be quite plain as to what the situation is, so I have none in mind.

Mr. GORDON: Very well, your Honor. I think myself the record is complete as to the facts in the matter, and I think it can be very readily argued.

Exam. WAY: That is all we want, purely the facts, at this time.

Mr. GORDON: Very well.

Exam. WAY: A proposed report will be issued in this proceeding.

Off the record.

1040 (Discussion off the record.)

Exam. WAY: On the record.

Briefs will be due—

Mr. GORDON: Could we have 60 days on filing of briefs after receipt of transcript?

Exam. WAY: I will go part way with you.

Mr. GORDON: Make it 60 days from today, then.

Exam. WAY: Briefs will be due on April 1st.

Mr. GORDON: Concurrent briefs?

Exam. WAY: Yes.

If there in nothing further, the hearing is closed.

(Whereupon, at 4:40 p. m., Tuesday, February 11, 1947, the hearing was closed.)

(Uniform Domestic Straight Bill of Lading, Adopted by Carriers in Official, Southern, Western and Illinois classification territories, March 15, 1922, as amended August 1, 1930, and June 15, 1941.)

3

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

from THE YALE & TOWNE MFG. CO.

PHILADELPHIA DIVISION

The property described hereunder, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

at Frankford, Pa., [illegible] 194[illegible] Shipper's No. [illegible]-U

By _____ Customer's No. [illegible] Req. No. _____

(Mail or street address of consignee—for purposes of notification only)

Consigned to [illegible]

Destination [illegible] State of Illinois County of _____

Route [illegible]

Delivering Carrier _____ Car Initial _____ Car No. _____

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHK. COL.
[illegible]	Cases / Cartons — Pulley Blocks or Chain Hoists with Gears, Ratchets or Worms	[illegible] / 670		
	Cases / Cartons — Pulley Block or Chain Hoist Parts with Gears, Ratchets or Worms			
	Cases / Cartons — Pulley Blocks or Chain Hoists without Gears, Ratchets or Worms			
	Cases / Cartons — Pulley Block or Chain Hoist Parts without Gears, Ratchets or Worms			
	Cartons / Loose — Trolleys, Overhead Track, Iron, with or without Gear Wheels			
	Cases / Cartons — Iron Chains 3/16 inch or over in thickness			
	[illegible]			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(SIGNATURE OF CONSIGNOR)

If charges are to be prepaid, write or stamp here, "To Be Prepaid."

to be [illegible]

Received $ _____ to apply in prepayment of the charges on the property described hereon.

AGENT OR CASHIER

Per _____

(THE SIGNATURE HERE ACKNOWLEDGES ONLY THE AMOUNT PREPAID.)

Charges Advanced

This shipment is correctly described

Correct weight is _____ lbs.

Subject to verification by the

Trunk Line Freight Inspection Bureau

According to Agreement

THE YALE & TOWNE MFG. CO., Shipper

PHILADELPHIA DIVISION

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification.

THE YALE & TOWNE MFG. CO., Shipper, Per bbl

PHILADELPHIA DIVISION

Agent Per _____

Permanent post-office address of shipper—Frankford, Philadelphia 24, Pennsylvania

FORM A P 493 [illegible]

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1936, and June 16, 1941.)

"Subject to all the provisions and conditions of the bill of lading form appearing in classification effective at this time, which provisions and conditions R. M. HOLLINGSHEAD CORP. guarantees are correctly shown herein, it is stipulated that the signature of the carrier's agent to this bill of lading is not to be understood as certifying to the size, dimensions, composition, quality or other similar description of the property named herein, such description being for the convenience of the shipper only except as required by the carrier's Classification and tariff as part of the description of the freight."

THIS MEMORANDUM

is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading. Not a copy or duplicate, covering the property named herein and is intended solely for filing or record.

10

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

Cust. No. [redacted]

R. M. H. Corp. No. [redacted]

[redacted]

From R. M. HOLLINGSHEAD CORP.

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

[redacted]

at Camden, N. J., _____ 194____ Shipper's No. _____

[redacted]

_____ Company Agent's No. _____

[redacted] of C[redacted] P[redacted] if[redacted]on only.)

Consigned to [redacted]

Destination _____ State of [redacted] County of _____

Route _____

Delivering Carrier _____ Car Initial _____ Car No. _____

Total Pkgs. _____

Total Wt. Lbs. _____

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

R. M. HOLLINGSHEAD CORP.
(Signature of Consignor)

If charges are to be prepaid, write or stamp here "To be Prepaid."

[redacted]

Received $ _____
to apply in prepayment of the charges on the property described hereon.

_____
Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges advanced: $ _____

No. Pkgs.	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	Ck. Col.	No. Pkgs.	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	Ck. Col.	No. Pkgs.	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	Ck. Col.
	Cases Soap, noibn					Cases Liquid Floor Wax, in Tin					Cases Putty, in Tin			
	Drums Soap, noibn					Drums Liquid Floor Wax					Cases Liquid Shellac			
	Pails Soap, noibn					Cases Paste Floor Wax, in Tin					Cases Liquid Shellac, in Tin (Red Label)			
	Cases Petroleum Lubricating Oil, in Tin					Pails Paste Floor Wax					Cases Paste Linoleum Cement, in Tin			
	Drums Petroleum Lubricating Oil					Cases Vehicle Polish or Wax, in Tin, noibn					Pails Paste Linoleum Cement			
	Cases Lubricating Oil, in Tin (Red Label)					Cases Polishing Compound, noibn, in Tin					Cases Fire Extinguisher Compound, noibn			
	Cases Petroleum Lubricating Grease, in Tin					Drums Polishing Compound, noibn					Cases Dry Goods, noibn			
	Drums Petroleum Lubricating Grease					Cases Polishing Compound, noibn, in Tin (Red Label)					Cases Pneumatic Tire, Repair Kits			
	Pails Petroleum Lubricating Grease					Cases Liquid Furniture Polish					Cases Cotton Cloths, Oiled, noibn, Not Coated			
	Cases Liquid Auto Top Dressing, in Tin					Cases Liquid Boiler Preserving and Scale Removing Compound, in Tin					Cases Iron and Steel Rust Preventing or Removing Compound other than Petroleum, noibn, in Tin			
	Cases Shoe Dressing, in Tin					Drums Liquid Boiler Preserving and Scale Removing Compound								
	Cases Liquid Paint, noibn, in Tin					Cases Liquid Cleaning Compound, noibn, in Tin					Cases Sheet and Cast Iron Pumps, Hand, K. D., noibn			
	Cases Liquid Anti-Freezing Compound, in Tin					Drums Liquid Cleaning Compound, noibn					Cases Store Dis. Rcks., noibn, K. D. flat.			
	Drums Liquid Anti-Freezing Compound					Cases Paste Cleaning Compound, noibn, in Tin					Cases Sprayers, Hand, noibn, K. D.			
	Cases Alconol Anti-Freezing Compound, in Tin (Red Label)					Cases Powdered Cleaning Compound, noibn, in Tin					Cases Brushes			
	Cases Liquid insecticides, other than Agricultural, in Tin					Cases Paste Metal Cutting Compound, in Tin					Empty used Steel Drums, ... Guage			
	Drums Liquid Insecticides, other than Agricultural					Cases Solder, noibn					Cases Tin Can Tops, other than Display, noibn			
	Cases Disinfectants, other than Medicinal, noibn				6	[redacted] Metallic Cement, noibn, in Tin	126				Cases Sheet Iron, or Steel Cans, noibn, not Nested, ... ox. Cap.			
	Drums Disinfectants, other than Medicinal, noibn					Cases Radiator Cement, in Tin					Cases Sheet Iron, Pails not Nested, noibn, 3 Gal. Capacity			
2	Cases Brake or Shock Absorber Fluid, in Tin, other than Petroleum	36				Cases Liquid R[redacted] Cement, in Tin								
	Drums Brake or Shock Absorber Fluid, other than Petroleum					Cases Pipe Fitt[redacted] Cement, in Tin								

[redacted] PER))

[redacted] Per

SALT LAKE CITY DEAL

We certify this to be an exact copy of the original document.

R. M. HOLLINGSHEAD CORPORATION

TRAFFIC MANAGER

†This shipment is correctly described
Correct weight is _____ Lbs.
Subject to verification by the
Trunk Line Freight Inspection Bureau
According to Agreement
R. M. Hollingshead Corp., Shipper
Per _____

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

*If the shipment moves between two po[redacted] by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

†This is to certify that the above articles are properly described by name, and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission and the Secretary of Commerce.

†"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

5

R. M. HOLLINGSHEAD CORP., *Shipper*

Per _____

Permanent post-office address of shipper, 840 COOPER ST., CAMDEN, N. J.

_____ Agent

Per _____

FORM PD 90 ⊕ PAT'D

✓ Exhibit No. 31

Issued 3-12-46

2

DUPLICATE FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

STATION SALT LAKE DATE 1828-40 REF NO C SL 773-17

SHIPPER: THOMPSON PROD INC
CLEVELAND OHIO

DATE OF SHIPMENT 1-10-46

CONSIGNEE: MOTOR MERCANTILE CO
SALT LAKE CITY UTAH

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
2	CTNS AUTO ENG PARTS NBN	107			
8	CTNS AUTO ENG PARTS NBN 10RS	472			
		579	332		19 22
			3%		58
	S/N AV 43384 ETC 15.4051				19 80

O. K. PREPAID
MAR 21 1946
L. C. S. TRAFFIC DEPT.

1053

597

699

Exhibit 29

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

1

STATION SAN FRANCISCO

DATE 8 30 46

REF. NO. CSF 1194-1

SHIPPER
TYSON BEARING CORP
MASSILLON OHIO

CONSIGNEE
CHANSLOR & LYON CO
740 ~~REKSX~~ POLK ST
SAN FRANCISCO CALIF

DATE OF SHIPMENT 8 13 46

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
1	CTN STL ROLLER BEARINGS	35	PKG		3 31
	Tyson PD INTO CHGO @		MIN		8
	BAL @		MIN		2 51
			3%		08
					2 59
					PREPAID

Payable Within 96 Hours

REMIT DIRECT TO
PACIFIC COAST WHOLESALERS ASS'N
108 WEST SIXTH STREET
LOS ANGELES, • CALIF

PRR W/B 266702 8 13 46

651

1049

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1941.)

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

From TYSON BEARING CORP.

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

At Uhrichsville Ohio Aug 6 1946 ( ) Shipper's No.

Company Agent's No.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to Pacific Coast Wholesale Lumber Assn. 900 South Wells Ave

Destination Chicago State of Illinois County of

Route P.R.R. to P.C.W.B.

Delivering Carrier Car Initial Car No.

Number Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
1	Carton of tapered roller bearings For: Chrysler Corp 140 Polk Street San Francisco, Calif Prepaid thru	95#		

Our Order No. Jr-50096-B Customer's Order No. 62406

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

TYSON BEARING CORP., Shipper, Per J. W. Tyson

Permanent postoffice address of shipper, Massillon, Ohio, U.S.A.

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

TYSON BEARING CORP.

For

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

PREPAID

Rec'd $ to apply in prepayment of the charges on the property described hereon.

The Pennsylvania Railroad Co.
Agent or Cashier
MASSILLON, OHIO
Per RECEIVED
(The signature here acknowledges only the amount prepaid.)
AUG 6 1946
Charges advanced: $
DRAWN BY SHIPPER
N. HOOVLER, Agent
Agent, Per

6-1289-51 B 6288 PRINTED BY THE STANDARD REGISTER COMPANY DAYTON, OHIO U.S.A.

653

1050

Exhibit 26

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

1

...ION SALT LAKE DATE 8 5 46 REF. NO. CSL 915-2

SHIPPER: KEYSTONE LUBRICATION CO
PHILA PENNA

CONSIGNEE: THE GALIGHER CO.
SALT LAKE CITY UTAH

DATE OF SHIPMENT 7 24 46

RECEIVED PAYMENT AUG 1 2 1946 PACIFIC COAST WHOLESALERS ASS'N

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
10	DRUMS PET LUB GREASE	4495			
7	KEGS DO	[illegible]			
1	PKG 29 LB PAIL PET LUB GREASE	29	295	M	059 68
1	BX GREASE CUPS STL grease 100.72	16	295		47
		5429			16015
	chg Tickner		3%		480
	chg customer 64.03				164 95
	$ 164.95				PREPAID
CKS	BX SHORT W/R @ CHGO				

KINDLY RECEIPT AND RETURN

LIESCHULTZ 72711 7 27 46

7380

Payable Within 96 Hours

REMIT DIRECT TO
PACIFIC COAST WHOLESALERS ASS'N.
108 WEST SIXTH STREET
LOS ANGELES

F. 149 Page 5

643

1045

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1930 and June 15, 1941.)

Th' Memorandum is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No._____

Agent's No._____

_____ COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

From KEYSTONE LUBRICATING CO. At Philadelphia, Pa., _____ 19__

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination if on its own road or its own water line, otherwise to deliver to another carrier on the route to the said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to THE PACIFIC COAST WHOLESALERS ASSO. 900 S WELLS STREET

Destination CHICAGO State of ILL. County of

Route HIGHWAY FAST FRT

Delivering Carrier Car Initial Car No.

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	★WEIGHT (Sub. to Cor.)	Class or Rate	Check Column
10	Drums Petroleum Lub. Grease	4495	✓	
	Half Drums " " "			
7	Kegs " " "	889	✓	
	Boxes " " "			
	57 Lb. Pails Pet. Lub. Grease			
1	29 Lb. " " " "	29	✓	
	Drums " " Oil			
	Half Drums " " "			
	Kegs " " "			
	5 Gal. Pails " " "			
	Boxes " " "			
1	Boxes Grease Cups (Steel)	16	✓	
	Boxes Grease Fittings (Steel)			
	Boxes Advertising Matter, printed	5429		

FOR- THE GALIGHER COMPANY
SALT LAKE CITY, UTAH

This shipment is correctly described

Correct Weight is.....Lbs.

Subject to verification by the TRUNK LINE FREIGHT INSPECTION BUREAU According to Agreement

KEYSTONE LUBRICATING CO. Shippers

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

COLLECT TO CHICAGO
POWA TO BILL SHIPPER

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

COLLECT TO CHICAGO
POWA TO BILL SHIPPER

JUL 23 1946

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

★If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. **The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding**

_____ per _____

KEYSTONE LUBRICATING CO., Shipper

Per _____

Per _____ Agent

3

Permanent post-office address of shipper, Twenty-First, Clearfield and Lippincott Sts., Philadelphia, Pa.

✓ Exhibit No. [illegible]

1

ORIGINAL FREIGHT BILL
PACIFIC COAST WHOLESALERS' ASSOCIATION

STATION: SEATTLE

DATE: [illegible]/1/46

REF. NO.: [illegible] 1296-1

SHIPPER:
WEATHERHEAD CO
CLEVELAND OHIO
B/L 3391

DATE OF SHIPMENT: 7/5/46

PAID TO CARRIER
AUG 13 1946
BY THE CLEVELAND TRUST CO.
CORPORATION TRUST DEPT.

CONSIGNEE:
COLYEAR MOTOR SALES CO
SEATTLE WN

Payable Within 96 Hours

REMIT DIRECT TO
PACIFIC COAST WHOLESALERS ASS'N
[illegible] XTH STREET
LOS ANGELES, CALIF.

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
#1	CTN HOSE NOIBN INC FLEX MTL HOSE	31	352		1 09
7	CTNS PIPE FTGS NOIBN BRS	275	287		7 89
		306			8 98
			3%		27 EXT'D
					9 25
	# ITEM AHD CSE 1278-9				
	191 LIBERTY HIGHWAY CO-83740-7/5/46				PREPAID

655

1051

✓ Exhibit 28

~~Ex 28~~

1

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

S ION LOS ANGELES

DATE 10 23 46 REF. NO. CLA 1986-16

SHIPPER: SUPERIOR TUBE CO
COLLEGE VILL PENN

CONSIGNEE: DUCOMMUN MTL & SUP CO
LOS AN GELES CAL IF

DATE OF SHIPMENT ~~XX~~ 9 30 46

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
1	BX WROT SMLS STB TUBING	304	293		
	PD INTO CHGOO		X~~XX~~71		
	BALANCE		222		6 75
			3%		20
					6 95 ✓
					PREPAID

Payable Within 96 Hours

REMIT DIRECT TO
PACIFIC COAST WHOLESALERS ASS'N.
108 WEST SIXTH STREET
LOS ANGELES, CALIF

P. O No.	none	Completed	~~Partial~~
[illegible]	—	Mat'l Rec'd Date	none
[illegible]	HDK	Chg. Acct.	Amt.
[illegible]	[illegible]	408	
[illegible]	[illegible]		
Vo. N	11-123		
Ck. No.			

BALTIMORE & OHIO RR CO PRO 19963 CK VA. NPE

OCT 30 1946

647

1047

649

No. 1 Small

(... Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories ... 1922, as amended August 1, 1930, and June 15, 1941.)

4-45—12M Pads
7¼ x 8½

3rd Sheet

THIS MEMORANDUM ... acknowledgment that a Bill of Lading has been issued and is not the original Bill of Lading nor a copy or duplicate covering the property named herein, and is intended solely for filing or record.

Shipper's No. _____

Agent's No. _____

READING COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

At Collegeville, Pa. Sept. 24 1946 From Superior Tube Company

... as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company ... agrees to carry to its usual place of delivery at said ... to each carrier of all or any of said property over all ... and subject to all the conditions ... by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to Pacific Coast Wholesalers Assn., 900 S. Wells St.,

Destination Chicago State of Ill County of _____

Route _____

Delivering Carrier _____ Car Initial _____ Car No. _____

1 Box Wrought Seamless Steel Tubing 304#
51043

by PCWH -

REF # ... - 1950 - 11 - dated - 9-30-46 -

1030
536 ...

For Reshipment to:
Ducommun Metals and Supply Co.,
4890 South Alameda St.,
Los Angeles, Calif.
Charges Prepaid

Prepaid

Received $ _____ to apply in prepayment of the charges on the property described hereon.

(Agent or Cashier)

Per _____

(The shipper's bare acknowledgment only the amount prepaid.)

Charges Advanced:

$ _____

The Charges on this Shipment Fully Prepaid

READING COMPANY
COLLEGEVILLE, PA.
SEP 24 1946

... the bill of lading shall state whether it is a carrier's or shipper's weight."

... shippers are required to state specifically in writing the agreed or declared value of the property.

The ... property is hereby specifically stated by the shipper to be not exceeding _____ per _____

Superior Tube Company Shipper. _____ Agent

rlh

Per _____ Per _____

Permanent Post-Office Address of Shipper _____

1048

Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1928, and June 15, 1941

3391

THIS MEMORANDUM

is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate covering the property named herein, and is intended solely for filing or record.

Shipper's No.

The Kenthurhead Co. Company

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

at 300 S. 131st St. 1946 FROM

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to Pacific Coast Wholesalers Assn. 900 S. Wells St.

Destination Chicago, Ill. State of Ill. County of

Route via Liberty Highway & P.C.W.A.

Delivering Carrier Car Initial Car No.

NO PACKAGES	DESCRIPTION OF ARTICLES SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (SUBJECT TO CORRECTION)	CLASS OR RATE	CHECK COLUMN
1 ctn.	Hose, N.O.I. including flexible metal hose.	31#		
7 ctns.	Pipe Fittings N.O.I.B.N. brass, coupling No." order # 44226-J 8-3	276#		
	For: Colyear Mtr. Sales Co. 1534 11th Ave. Seattle, Wash.			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

1 ctn.	Hose, N.O.I. including flexible metal hose.	31#		
7 ctns.	Pipe Fittings N.O.I.B.N. brass, coupling No." order # 44226-J 8-3	276#		
	For: Colyear Mtr. Sales Co. 1534 11th Ave. Seattle, Wash.			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Prepaid

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

3

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

AT:1J Shipper,

Per Agent.

Permanent post-office address of shipper,

Autographic Register Co., Hoboken, N. J. PAT. NO. 2,231,107

1052

LAMBERT COMPANY, Ltd.

DISTRIBUTORS OF

AUTOMOTIVE PARTS and EQUIPMENT

1202 E. OLYMPIC BLVD. - LOS ANGELES 21, CALIF. - TR. 2441

Los Angeles
145 S. LA BREA
Phone YOrk 2185

Sold to ALMETAL UNIV JOINT CO Date Sept. 24, 1946 From Store

Address Via

Town Cleveland 3, State Ohio. XXX Salesman Bowen

DEBIT MEMO

INVOICE

V	Quantity	LABOR AND MATERIAL	PRICE EACH	NET PRICE EACH	AMOUNT	DISC.	NET TOTAL
		Freight Allowance					
		Pacific Coast Wholesalers' Assn.					
		F/B CIA 1942-45					107 46
		Please issue credit memo.					
		Freight bill enclosed.					
		SEP 26 1946					

Form 12 5M 7-42

M 3963

1057

667

(Uniform Domestic Straight Bill of Lading. Adopted by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1930, and June 15, 1940)

UNIFORM STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

From **THOMPSON PRODUCTS, Inc.**

the ... ty described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

U 1332 V 42738-9 V 43382

at Cleveland, Ohio 11/13 194 Shipper's No. A 3288

Company Agent's No. U 1424 Customer's Order No. 1361 2369

(Mail or street address of consignee—For purposes of notification only.)

Consigned to PACIFIC COAST WHSE ASSN

Norwalk 900 SOUTH WELLS ST

Destination CHICAGO State of ILLINOIS County of

Route To Pacific Coast Wholesale Co

Delivering Carrier Car Initial Car No. MAR 21 1940

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

If charges are to be prepaid write or stamp here, "To be Prepaid." Prepaid

Rec'd $ ... to apply in prepayment of the charges on the property described hereon. 12L 353-17

Agent or Cashier

Per ... (The signature here acknowledges only the amount prepaid.)

Charges Advanced: $

CARTONS	BOXES	KEGS		Description of Articles, Special Marks, and Exceptions	EXPORT MARKS	*WEIGHT (Sub. to Cor.)	Class or Rate	V
			A	AUTO ENGINE, DRIVING GEAR OR STEERING GEAR PARTS, N.O.I.B.N., ALUM.				
2			B	AUTO ENGINE, DRIVING GEAR OR STEERING GEAR PARTS, N.O.I.B.N., BRASS, BRONZE, OR COPPER (PUMP)		107		
8			C	AUTO ENGINE, DRIVING GEAR OR STEERING GEAR PARTS, N.O.I.B.N., IRON OR STEEL		212		
-			D	BUSHINGS, N.O.I.B.N., METAL (BRONZE, AUTOMOBILE)			33	
			E	BEARINGS, N.O.I.B.N., OTHER THAN BALL OR ROLLER, I. OR S.		599		
-			E	BUSHINGS, N.O.I.B.N., IRON OR STEEL				
			E	SPRINGS, N.O.I.B.N., WIRE, STEEL				
			F	AUTOMOBILE SHACKLES, OTHER THAN BALL OR ROLLER				
			G	BOLTS, N.O.I.B.N., IRON OR STEEL	FOR: MOTOR MERCANTILE CO LOS ANGELES CALIF			
			H	BOXES, PAPERBOARD S. U. EXCEEDING 15 UNITED INCHES				
			I	BOXES, PAPERBOARD S. U. NOT EXCEEDING 15 UNITED INCHES	FOR: STREVELL PATTERSON		1922	
			J	BOXES, CORRUGATED K. D. FLAT OR FOLDED FLAT				
			J	STEEL STAMPINGS, 16 GA. OR THICKER UNFINISHED				
			K	PAILS, DRUMS, PETROLEUM LUBRICATING OIL			1.20	

*Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

THOMPSON PRODUCTS, Inc., Shippers, Per L. Shapiro **Agent, Per**

Permanent postoffice address of shipper, 2200 ASHLAND RD., CLEVELAND, OHIO

ALBERT M'F'D BY THE EGBY REGISTER CO. PATENTED

PACKAGE WEIGHTS—For Shipper's Use Only—Not A Part Of B/L

A	B	C	D	E	F	G	G	H	I	J
		E SPRINGS, N.O.I.B.N., WIRE, STEEL								
		F AUTOMOBILE SHACKLES, OTHER THAN BALL OR ROLLER								
		G BOLTS, N.O.I.B.N., IRON OR STEEL — FOR: MOTOR MERCANTILE CO LOS ANGELES CALIF								
		H BOXES, PAPERBOARD S. U. EXCEEDING 15 UNITED INCHES								
		I BOXES, PAPERBOARD S. U. NOT EXCEEDING 15 UNITED INCHES — FOR: STREVELL PATTERSON — 1922								
		J BOXES, CORRUGATED K. D. FLAT OR FOLDED FLAT								
		J STEEL STAMPINGS, 16 GA. OR THICKER UNFINISHED								
		K PAILS, DRUMS, PETROLEUM LUBRICATING OIL — 1.20								

*Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

THOMPSON PRODUCTS, Inc., Shippers, Per L. Shapiro **Agent, Per**

Permanent postoffice address of shipper, 2200 ASHLAND RD., CLEVELAND, OHIO

ALBERT M'F'D BY THE EGBY REGISTER CO. PATENTED

PACKAGE WEIGHTS—For Shipper's Use Only—Not A Part Of B/L

	A	B	C	D	E	F	G	G	H	I	J
1		59	16								
2		48	94								
3			55								
4			64								
5			53								
6			78								
7			45								
8			55								
9											
10											
11											
12											
13											
14											
15											
16											

CARRIER

PICK UP

FORM 265 REVISED

2

EXHIBIT 32

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

STATION LOS ANGELES DATE 9 12 45 REF NO. CLA 1942-45

SHIPPER
ALMETAL UNIV JOINT CO
CLEVELAND O

CONSIGNEE
THE LAMBERT CO LTD
LOS ANGELES CALIF

DATE OF SHIPMENT 8 28 46

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
2	BXS (JOINTS) I&S AUTO PTS				
24	BALE (JOINTS) I&S AUTO PTS				
8	CTNS (JOINTS) I&S AUTO PTS	2964	352	104 33	
			3%	3 13	
				107 46	

OK Jewell

UNDER FEDERAL LAW-I. C. C.-AND C. R. C. REGULATIONS - THIS BILL IS DUE AND PAYABLE BY

SEP 19 1946

PACIFIC TRANSP. & WHSE. CO.

PAID
SEP 18 1946
1972
LAMBERT CO. LTD.

3587

THIS FREIGHT BILL HAS BEEN PAID TO THE ORIGINAL CARRIER. IT IS NOW DUE
THE PACIFIC TRANSPORTATION & WHSE. CO, INC
825 E. 62nd ST. - LOS ANGELES 1, CALIF.

663

1055

LAMBERT COMPANY, Ltd.

DISTRIBUTORS OF

AUTOMOTIVE PARTS and EQUIPMENT

1202 E. OLYMPIC BLVD. - LOS ANGELES 21, CALIF. - TR. 2441

Los Angeles
145 S. LA BREA
Phone YOrk 2185

Sold to A. METAL UNIV. JOINT CO. Date 2-25-46 From Akron Store

Address 1953 E. 55 St. Cleveland, Ohio. Via

Town State Salesman AK

DEBIT MEMO

INVOICE

✓	Quantity	LABOR AND MATERIAL	PRICE EACH	NET PRICE EACH	AMOUNT	DISC.	NET TOTAL
		Frt Allowances —					
		P.C.W.A. Frt Bill # 1705-30					24 04
		" " 1711-13					23 53
		" " 1717-28					9 48
		" " 1721-10					4 24
		Atlas " 351271					23 53
		Please issue credit memo for Frt bills attached.					84 82

Form 12 5M 7-43

1058

M 2644

(Uniform Domestic Straight Bill of Lading, Adopted by Carriers in Official, Southern, Western and Illinois classification territories, March 15, 1922, as amended August 1, 1939, and June 15, 1941.)

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

3

Shipper's No. .....

_____ **Company** Agent's No. .....

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

at Cleveland, Ohio, [illegible] 1946 from THE ALMETAL UNIVERSAL JOINT CO.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to [illegible] Coast Wholesalers Assoc.

Destination 900 S Wells St **State of** Ill. **County of**

Route [illegible]

Delivering Carrier Long **Car Initial** **Car No.**

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHK. COL.
	Crates (Shafts) Iron and Steel Auto Parts			
2	Boxes (Joints) Iron and Steel Auto Parts			
3.16	Bale (Joints) Iron and Steel Auto Parts			
8	Carton (Joints) Iron and Steel Auto Parts			
	6685			
	8768			
	TOTAL	2964 #		

10-3-46

For The Lambert Co. LTD.
1202 E. Olympic Blvd
Los Angeles, Calif.

RECEIVED AUG 2 [illegible] LONG TRANSPORTATION CO. CLEVELAND, OHIO

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(SIGNATURE OF CONSIGNOR)

If charges are to be prepaid, write or stamp here, "To Be Prepaid."

Received $..... to apply in prepayment of the charges on the property described hereon.

AGENT OR CASHIER

Per.....

(THE SIGNATURE HERE ACKNOWLEDGES ONLY THE AMOUNT PREPAID.)

Charges Advanced:

$.....

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding..... per.....

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

THE ALMETAL UNIVERSAL JOINT CO., Shipper, Per E. J. ..... Agent Per.....

Permanent post-office address of shipper—1553 East 55th St., Cleveland 3, Ohio

E 8441 MADE BY INDIANA PHYS. CO. CRAWFORDSVILLE IND

665

1056

Exhibit 33

671 1059

SHEET NO. 1

Ex. 33 Schmidt

EX PARTE NO. 160
P.C.W.A.

EXHIBIT "C"

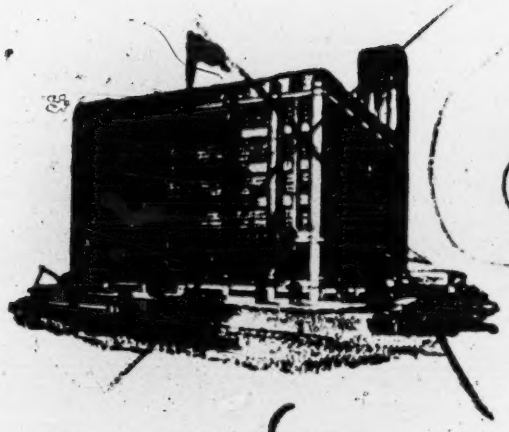
BLACKHAWK MANUFACTURING COMPANY

LIST OF DOCUMENTS WHICH WILL BE BROUGHT TO THE CHICAGO HEARING BY WITNESS P. J. SPIELMANN, ASSISTANT TREASURER, FOR INTRODUCTION IN THE RECORD. COPIES OF DOCUMENTS ATTACHED

Bill of Lading Date & No.	Shipping Order Date & No.	Consignee Purchase Order Date and No.	Consignor Origin	Consignee Destination	Description of Article	Weight in Lbs.	Record not furnished Invoices Date and Number *See Note
5/1/46 V 1064	5/1/46 U 46725	5/9/45) 1821)	Blackhawk Mfg. Co. Milwaukee, Wis.	Ballow & Wright Portland, Oregon	Jacks Wheeled Fibre Boxes	350	5/1/46 U 46725
5/9/46 V 1311	5/2/46 V 48280	5/9/45) 1821)	"	"	Jacks Wheeled	780	5/9/46 V. 48280
8/29/46 V 7551	7/15/46 W 24003	12/8/45) 651)	"	Ballow & Wright Spokane, Washington	Jacks Wheeled Fibre Boxes	405	8/29/46 W 24003
10/10/46 V 10447	10/10/46 W 9712	10/30/45) 9765)	"	"	Box Jacks	112	10/10/46 9712
1/15/46 U 11957	1/19/45 T 93032	1/9/45) SLH 37573 G)	"	(Motor Parts Co., Price, **(Utah. Ordered by & billed (against Salt Lake Hardware (Co., Salt Lake City, Utah	Box Jacks	81	1/15/46 T 93032
1/2/46 U 10957	11/16/44 T 70801	8/3/44) 37093 G)	"	Salt Lake Hardware Co. Salt Lake City, Utah	Jacks, Fibre boxes & Jack Parts	570	1/2/46 T 70801
2/14/46 U 14505	1/3/46 V 7480	8/3/44) 37093 G)	"	"	Fibre boxes, Jacks	280	2/14/46 V 7480
10/30/46 V 11714	8/28/45 U 71711	8/21/45) 82146 XX)	"	J.E. Haseltine & Co Portland, Oregon	Boxes of Jack parts	590	10/30/46 U 71711
7/29/46 V 5417	5/13/46 W 3967	10/4/45) X 14874)	"	Ducommun Metals & Supply) Co., Los Angeles, Calif.)	Porto Power Assortment	-	7/29/46 W 3967
2/26/46 U 15487	12/4/44 T 77684	11/22/44 58681	"	Chanslor & Lyon Co. San Francisco, California	Jacks	550	2/26/46 T 77684

* The shipping orders represent the basic document from which the invoice is written and contain the identical information appearing on the invoices. See Blackhawk Mfg. Co. letter of November 21 1946 attached

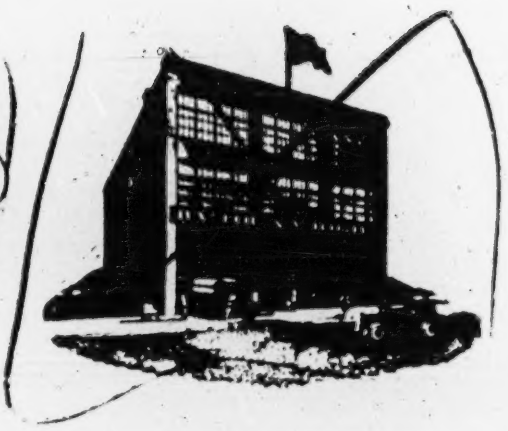
** The Motor Parts Company (consignee) apparently is not a member of P.C.W.A.



1890

BALLOU & WRIGHT

WHOLESALE
AUTOMOTIVE EQUIPMENT
BICYCLES AND SUPPLIES
PORTLAND. ORE.



TENTH AND FLANDERS STS.
PORTLAND OREGON

1813-15-17 TWELFTH AVE
SEATTLE WASH.

April 22, 1943

(673)
(1060)

Blackhawk Mfg. Company,
Milwaukee,
Wisconsin.

Gentlemen:

STANDING SHIPPING AND ROUTING INSTRUCTIONS
for less-than-carload shipments
TO PORTLAND, SEATTLE AND SPOKANE

In the future please forward all less-than-carload freight shipments to our stores in PORTLAND, SEATTLE and SPOKANE according to instructions shown below:

This letter amends previous standing shipping and routing instructions for pool car movement of freight and applies to all our unshipped orders as well as to orders filed with you hereafter.

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION,
900 South Wells Street, CHICAGO, ILL.

FOR: (Show Ballou & Wright and destination specified on our order.)

2 - FORWARD SUCH SHIPMENTS VIA:

Transamerican Freight Lines, Inc.

3 - CONSIGN SUCH SHIPMENTS TO:

PACIFIC COAST WHOLESALERS' ASSOCIATION,
900 South Wells Street, CHICAGO, ILL.

4 - SEND BILL OF LADING WITH YOUR INVOICE TO US AT FINAL DESTINATION.

RECEIVED
MAY 10 1943
BLACKHAWK MFG. CO.

Please acknowledge these instructions and assure us that they will be carefully followed.

Yours very truly,

BALLOU & WRIGHT

Purchasing Agent

WHOLESALE DISTRIBUTORS OF A[illegible]

HEADQUARTERS
SALT LAKE CITY, UTAH

The Salt Lake Hardware Co.

SALT LAKE CITY

(175) 1061

BRANCH HOUSES
[illegible] AND JUNCTION, COLO.
BOISE, IDAHO

RECEIVED
JUL 17 1942
BLACKHAWK MFG. CO.

July 9, 1942

Blackhawk Mfg. Company
Milwaukee,
Wisconsin

Gentlemen: Subject: **STANDING SHIPPING AND ROUTING INSTRUCTIONS**

In the future please forward all our less-than-carload freight shipments (of 20 pounds or [illegible]) the instructions shown below. This applies to all of our unshipped orders in your files as well as those we may place with you hereafter: (See Exception No. 1 on attached sheet for routing of certain articles.

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

FOR: The Salt Lake Hardware Company,
Salt Lake City, Utah

2 - PREPARE BILLS OF LADING AS SHOWN ON ATTACHED SPECIMEN.

3 - FORWARD SUCH SHIPMENTS TO CHICAGO VIA:

Cushman Motor Delivery Company.

4 - SEND BILL OF LADING TO:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

5 - SEND COPY OF BILL OF LADING AND YOUR INVOICE TO US AT SALT LAKE CITY.

Shipments weighing less than [illegible] sent via parcel post directly to us at Salt Lake.

Please acknowledge receipt of this letter and advise us that they will be carefully followed.

HEE:hr
Encl.

Manager

BUY UNITED STATES WAR BONDS

(677
1062)

MECHANICS TOOLS TIRES AND TUBES

IRON STEEL PIPE

PHONE AT. 7511

J·E·Haseltine & Co.

DISTRIBUTORS

HEAVY HARDWARE
WELDING EQUIPMENT
PIPE-VALVES-FITTINGS

MILL AND SHOP SUPPLIES
AUTOMOTIVE HARDWARE
MECHANICAL RUBBER GOODS

2ND AVE. & ASH ST. PORTLAND, OREGON

RECEIVED
AUG 10 1944
BLACKHAWK MFG. CO

August 7, 1944

Blackhawk Mfg. Company
Milwaukee,
Wisconsin

Gentlemen: Subject: STANDING SHIPPING AND ROUTING INSTRUCTIONS

In the future please forward all our less-than-carload freight shipments (of 20 pounds or more) according to the instructions shown below. This applies to all of our unshipped orders in your files as well as those we may place with you hereafter: (See Exception No. 1 on attached sheet for routing of certain articles.)

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

FOR: (show Consignee and Destination Specified on Our Order)

2 - PREPARE BILLS OF LADING AS SHOWN ON ATTACHED SPECIMEN.

below. This applies to all of our unshipped orders in your files as well as those we may place with you hereafter: (See Exception No. 1 on attached sheet for routing of certain articles.)

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

FOR: (show Consignee and Destination Specified on Our Order)

2 - PREPARE BILLS OF LADING AS SHOWN ON ATTACHED SPECIMEN.

3 - FORWARD SUCH SHIPMENTS TO CHICAGO VIA:

Cushman Motor Delivery.

4 - SEND BILL OF LADING TO:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

5 - SEND COPY OF BILL OF LADING WITH YOUR INVOICE TO US AT PORTLAND, OREGON

Shipments weighing less than 20 pounds should be sent via parcel post direct to us at Portland.

Please acknowledge these instructions and assure us that they will be carefully followed.

Yours very truly,

J. E. HASELTINE & CO.

Harold H. Cake

Harold H. Cake - Purchasing Agent

HHC:hr
Encl.

DUC[illegible]
MET[illegible]

INDUSTRIAL SUPPLIES

[illegible] ALIF

Blackhawk Manufacturing
Milwaukee,
Wisconsin

Gentlemen: Subject: STANDING SHIPPING AND ROUTING INSTRUCTIONS

In the future please forward all less-than-carload freight shipments (of 20 pounds or more) according to the instructions shown below. This amends previous standing shipping and routing instructions for pool car freight routing and applies to all our unshipped orders as well as to orders filed with you hereafter:

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

FOR: Ducommun Metals & Supply Co., Los Angeles, Calif.

2 - PREPARE BILLS OF LADING AS SHOWN ON ATTACHED SPECIMEN.

3 - FORWARD SUCH SHIPMENTS TO CHICAGO VIA:

Transamerican Freight Lines, Inc.

1 - MARK OR STENCIL ALL PACKAGES AS FOLLOWS:

PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

FOR: Ducommun Metals & Supply Co., Los Angeles, Calif.

2 - PREPARE BILLS OF LADING AS SHOWN ON ATTACHED SPECIMEN.

3 - FORWARD SUCH SHIPMENTS TO CHICAGO VIA:

Transamerican Freight Lines, Inc.

4 - SEND BILL OF LADING TO:

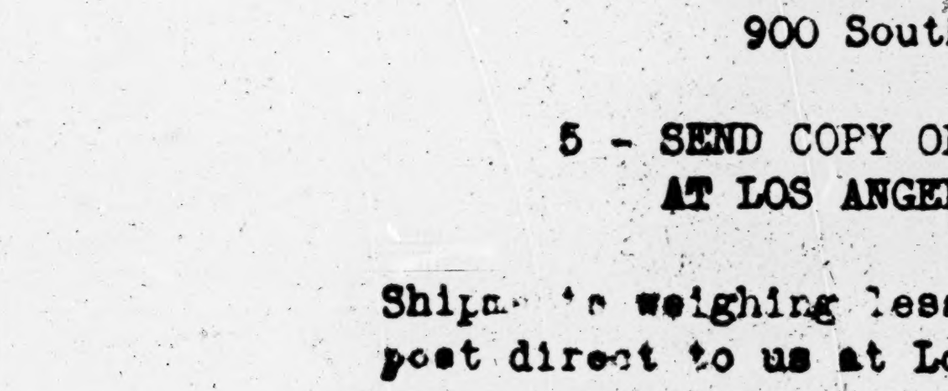
PACIFIC COAST WHOLESALERS' ASSOCIATION
900 South Wells Street, CHICAGO, ILLINOIS

5 - SEND COPY OF BILL OF LADING WITH YOUR INVOICE TO US AT LOS ANGELES, CALIFORNIA.

Shipments weighing less than 20 pounds should be sent via insured parcel post direct to us at Los Angeles.

The foregoing instructions do not apply to any of our shipments which are specifically routed via Parcel Post or Express. Please follow specific instructions on our orders whenever request is made thereon to ship via Parcel Post or Express.

Please acknowledge these instructions and assure us that they will be carefully followed.



Yours very truly,

DUCOMMUN METALS & SUPPLY CO.

H. Peller - Traffic Manager

[illegible]	2	[illegible]	[illegible]	~~55 57~~ 5530			110	60	
			copy 6/18/46				26	13	84 47

FREIGHT ALLOWANCE

SPECIAL SHIPPING INSTRUCTIONS

BACK ORDER

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

SHIPPING ORDER

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

V 48280 (681 1064)

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO.

443 PDX

BILL TO

AT

BALLOU & WRIGHT
327 N W 10TH AVE
PORTLAND 9 OREGON

SHIP TO

AT

ABOVE
THRU P C MA

V 1311

SHIP	VIA	DATE SHIPPED				
1004		MAY 9 - 1946				
DATE OF CUST. ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
6 945 K	1821	SPOONER 3A	2 10 PROX			
DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY			INSURANCE
80601-1						

QUANTITY BK.ORD.	QUANTITY ORDERED	PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
2	2	[illegible]	JACKS	~~55 37~~ 55 30		110 60	

RECORDED PROD. DEPT.

PING ORDER - JUN 12 1945

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

U 46725

(683 1065)

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B.L. NO

AA3 PDX

BILL TO . SALLOU & WRIGHT
327 N W 10TH AVE

AT . PORTLAND 9 OREGON

SHIP TO . [illegible]
[illegible] P C W A

AT

SHIP 1101 VIA [illegible] DATE SHIPPED MAY 1 - 1946

DATE OF CUST. ORDER	CUST. ORDER NO	SALESMAN	TERMS
5 9 45X	1821	SPOHR 3 A	2 10 PROX

DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY	INSURANCE
601	479		[illegible]	

QUANTITY BK.ORD.	QUANTITY ORDERED		PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
✓	2		84	JACKS	55 37			
	2	2	817	"	15 37		30 74	

AMOUNT

3074

FREIGHT ALLOWANCE

V24140

SPECIAL SHIPPING INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

2

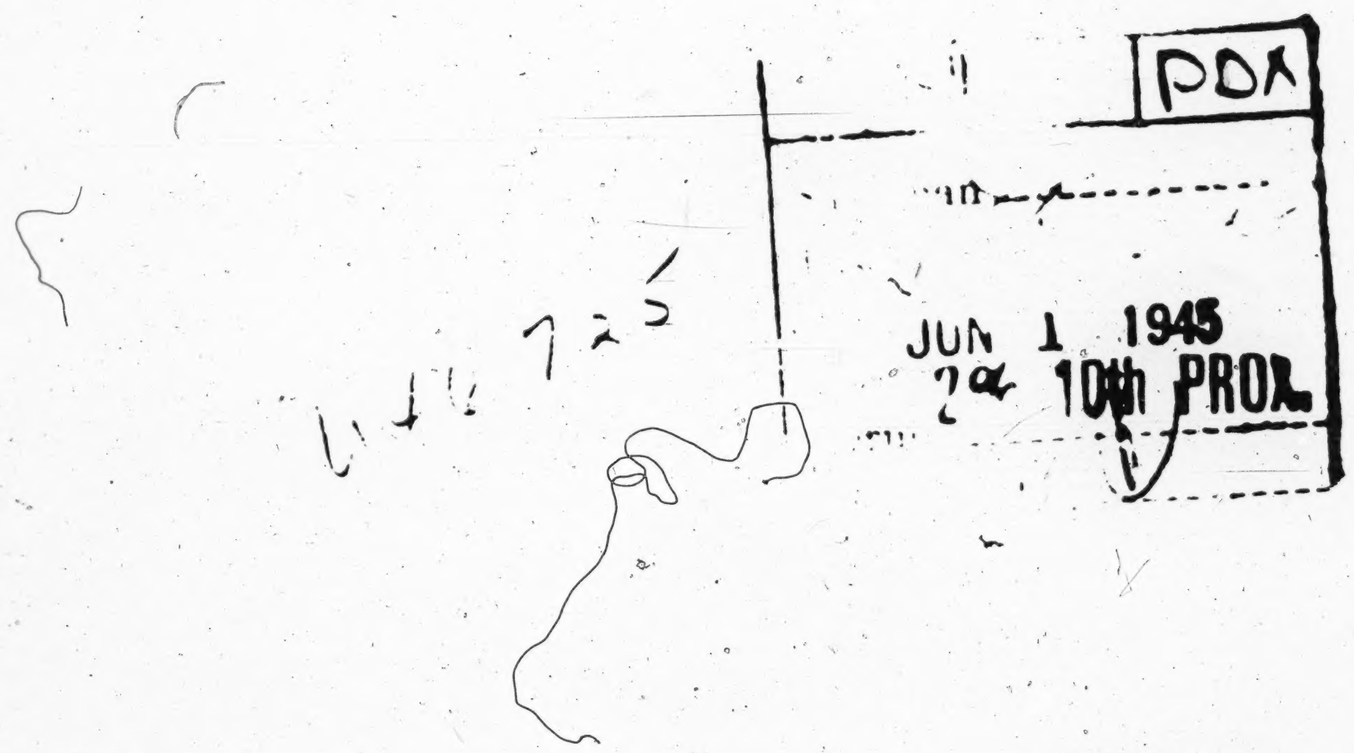
only S17 do

do

PDX

JUN 1 1945

2a 10th PROX.



[illegible]PTIFICATION

The undersigned purchaser [illegible] to the seller and to the War Production [illegible] to apply or extend the preference ratings indicated appear [illegible] on this purchase order, and that such [illegible] with [illegible] No. 3 [illegible] undersigned [illegible].

[illegible] By [illegible]

[illegible] ORDERED

FORM No. 24 A

...LAND - SALEM - EUGENE - ...ALLS
SEATTLE - TACOMA - SPOKANE

PURCHASE ORDER

BALLOU & WRIGHT
The Automotive House Complete
327 N. W. 10th Ave., Cor. Flanders

Nº 1821 (685 1066)

SHOW ABOVE NUMBER ON ALL INVOICES, PACKAGES, ETC.

PORTLAND 9, ORE. May 9, 1945

Blackhawk Manufacturing Company
Milwaukee, Wisconsin

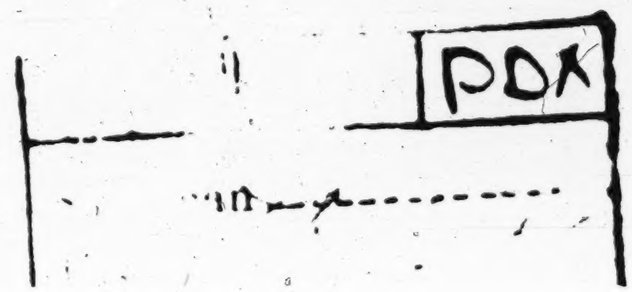
SHIP TO: Ballou & Wright
327 N.W. 10th Avenue
Portland, Oregon

INVOICE MUST SHOW ORDER NUMBER AND BE ACCOMPANIED BY THE ORIGINAL BILL OF LADING OR ORIGINAL SHIPPING RECEIPT.

SHIPPERS WILL BE HELD RESPONSIBLE FOR ANY LOSS OCCASIONED BY DELAY OR DAMAGE IN TRANSIT UNLESS ABOVE INSTRUCTIONS ARE FOLLOWED

QUANTITY ORDERED	ROUTE VIA	SHIP TO	SHIP
		PACIFIC COAST WHOLESALERS' ASSN. 9[illegible] South [illegible] St. Chicago, Ill. ACCORDING TO STANDING INSTRUCTIONS	

2	only S4 Jacks	AA3 WPB-547 PD-IX 1096090
2	only S17 do	do



SHIPPING ORDER

Aug 29 1946

RECORDED PROD. DEPT.

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

W 24003

BILL TO • BALLOU & WRIGHT
1513 TWELFTH AVE
SEATTLE WASH

AT •

SHIP TO • ABOVE
SPOKANE WASH

AT •

CHECKED J

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO.

SHIP	VIA	DATE SHIPPED			
		AUG 29 1946			
DATE OF CUST. ORDER	CUST. ORDER NO	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
						V 7551
DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY			INSURANCE
	176					

QUANTITY ORDERED	QUANTITY SHIPPED	PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
1	1	817	JACKS	13 37			
1	1	84	"	55 30			
						70 67	
			FREIGHT ALLOWANCE	11 50			
							59 17

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1941.)

UNIFORM STRAIGHT BILL OF LADING — ORIGINAL — Not Negotiable

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

FROM **BLACKHAWK MFG. CO.**

Shipper's No. _____

Agent's No. _____

At Milwaukee 1, Wis., 5-1 194 2

No. 1 1 4 2 2 2

1 5 4 2 2

Company

The property described below in apparent good order except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Pallow & Wright (Mail or street address of consignee—For purposes of notification only.)

Destination Portland State of Oregon County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Wrenches, N.O.I.B.N. With Attachments		
	Boxes Machines, N.O.I.B.M.S.N.		
	Crates Machines, N.O.I.B.N.S.U.		
	Fibre Boxes Machines, N.O.I.B.M.S.N.		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Fibre Boxes Jacks Not Wheeled		
	Boxes Jacks Not Wheeled		
	Crates Jacks Not Wheeled		
	Crates Store Display Racks K. D. Flat		
	Fibre Boxes Store Display Racks S U.		
	Bdls. ( ) Cartons Store Display Racks K. D. FLAT		
	Boxes Store Display Racks K. D. Flat		
	Boxes Tool Display Racks		
	Crates Tool Display Racks		

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Crates Steel Display Cabinets W-O Glass		
	Boxes Steel Display Cabinets W-O Glass		
	Fibre Boxes Steel Display Cabinets W-O GLASS		
	Boxes Display Rack Base K. D.		
	Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
4	Jacks Wheeled	780 335	
	Fibre Boxes Jacks Wheeled		
	Boxes Jacks Wheeled		
	Boxes Iron or Steel Jack Parts		
	Fibre Boxes Iron or Steel Jack Parts		
	Iron or Steel Jack Parts		
	Fibre Boxes Tools - N.O.I.B.N.		
	Boxes Tools - N.O.I.B.N.		
1			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

26.13

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested

MANUFACTURING COMPANY, Shipper, Per

Address of shipper, Milwaukee 1, Wis., U. S. A.

Service Performed By Shipper

Agent, Per

PRINTED BY THE SHIPPERS SUPPLY

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1941.)

UNIFORM STRAIGHT BILL OF LADING — ORIGINAL — Not Negotiable

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

FROM **BLACKHAWK MFG. CO.** Shipper's No. _____

Agent's No. _____

At Milwaukee 1, Wis., 5-1 194?

No. W16722
V-4140

Trans-Amer Company

the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Pettibone Illinois (Mail or street address of consignee—For purposes of notification only.)

Destination Peoria State of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments				Crates Steel Display Cabinets W-O Glass		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments				Boxes Steel Display Cabinets W-O Glass		
	Boxes Wrenches, N.O.I.B.N. With Attachments				Fibre Boxes Steel Display Cabinets W. ASS		
	Boxes Machines, N.O.I.B.N.S.U.				Boxes Display Rack Bins K. D.		
	Crates Machines, N.O.I.B.N.S.N.				Fibre Boxes Lubricating Oil IN BTL'S N.O.I.B.N.		
	Fibre Boxes Machines, N.O.I.B.N.S.N.				Jacks Wheeled		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed			5	Fibre Boxes Jacks Wheeled	350 335	
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Boxes Jacks Wheeled		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Boxes Iron or Steel Jack Parts		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Fibre Boxes Iron or Steel Jack Parts		
	Fibre Boxes Jacks Not Wheeled				Iron or Steel Jack Parts		
	Boxes Jacks Not Wheeled				Fibre Boxes Tools - N.O.I.B.N.		
	Crates Jacks Not Wheeled				Boxes Tools - N.O.I.B.N.		
	Crates Store Display Racks K. D. Flat				1		
	Fibre Boxes Store Display Racks S. U.						
	Bdls. ( ) Cartons Store Display Racks K. D. FLAT						
	Boxes Store Display Racks K. D. Flat						
	Boxes Tool Display Racks						
	Crates Tool Display Racks						

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

11.73
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Pick-Up Service Requested ☒ Service Performed By Shipper ☐

MFG. COMPANY, Shipper, Per

Complete address of shipper, Milwaukee 1, Wis., U. S. A.

Agent, Per V 1064

PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

SEATTLE
TACOMA
SPOKANE

PORTLAND
SALEM
EUGENE

MEWA

PURCHASE ORDER

BALLOU & WRIGHT

WHOLESALE

"The Automotive House Complete"

413 15-17 TWELFTH AVENUE

p. 693 (OPP)
1070

SHOW THIS **No. 651**

ON ALL INVOICES
DELIVERY SLIPS CASES
PACKAGES ETC

SEATTLE WASH Dec 6th 1945 SHIP TO Ballou & Wright

Blackhawk Mfg. Co

Spokane Wash.

Milwaukee Wis.

E MUST SHOW ORDER NUMBER AN[illegible] MPANIED
R[illegible] ORIGINAL BILL OF LADING OR [illegible] SHIPPING
RECEIPT

SHIPPERS WILL BE HELD RESPONSIBLE FOR ANY LOSS
OCCASIONED BY DELAY OR DAMAGE IN TRANSPORTATION
UNLESS ABOVE INSTRUCTIONS ARE FOLLOWED

[illegible] R[illegible] fp via

SHIP

[illegible] THIN 30 DAYS OF DATE SPECIFIED OR CANCEL AND NOTIFY US

Quantity Wanted	[illegible]eived	
1		S 17 Blackhawk Jack
1		S 14 S

Letter
7-2-46
O

W2403

Salesman [illegible]
Discount [illegible]

DEC 12 1945
[illegible]

SEND LIST OF ALL GOODS BACK ORDERED OR CANCELLED

FORM 344 1000 SETS 12-43

ORDER CHANGE NOTICE

(695 - 1071)

Ballard [illegible]

Seattle

PRIORITY RATING

DATE ORDER RECEIVED 12/13/45

INVOICE NUMBER [illegible]

ORDER NUMBER

Please Make the Following Changes in the Above Order

[illegible] (1) [illegible] to this

order.

ROUTING	DATE	INITIAL
1. SHIPPING DEPT.	AUG 2 - 1946	E.R.
2. SHOP OFFICE	8-6-46	RL
[illegible]ER DEPT.		
[illegible] DEPT.		

This Change Notice was Authorized by:

LETTER ☒ WIRE ☐ PHONE ☐

From [illegible] Date 7/25/46

[illegible] 8/2/46

COUNTERSIGNED DATE

BRI-10-1145-3

Sh. 8720

(F. 697- 1072)

(Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern, Western Classification territories Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1941.)

UNIFORM STRAIGHT BILL OF LADING — ORIGINAL — Not Negotiable

(Name of this Bill of Lading.)

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No.

At Milwaukee Wisconsin County of

No. 21 9215
21 9213

(Mail or street address of consignee—For purposes of notification only.)

Consigned to L. C. L. Lewis & Elliott

Destination Spokane. State of Washington. County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles: Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Machines, N.O.I.B.N.S.U.		
	Crates Machines, N.O.I.B.N.S.U.		
	Fibre Boxes Machines, N.O.I.B.N.S.U.		
	Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, boxed		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, boxed		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Fibre Boxes Jacks Not Wheeled		
	Boxes Jacks Not Wheeled		
	Crates Jacks Not Wheeled		
	Crates Store Display Racks K. D. Flat		
	Fibre Boxes Store Display Racks S. U.		
	Bdls. ( ) Cartons Store Display Racks		
	Boxes Store Display Racks K. D. Flat		
	Boxes Tool Display Racks		
	Crates Tool Display Racks		

No. Packages	Description of Articles: Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Crates Steel Display Cabinets W-O Glass		
	Boxes Steel Display Cabinets W-O Glass		
	W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Display Rack Base K. D.		
	Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
1	Jacks Wheeled	195	784
3	Fibre Boxes Jacks Wheeled	210	784
	Boxes Jacks Wheeled		
	Boxes Iron or Steel Jack Parts		
	Fibre Boxes Iron or Steel Jack Parts		
	Iron or Steel Jack Parts		
	Fibre Boxes Tools - N.O.I.B.N.		
	Boxes Tools - N.O.I.B.N.		
1			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

H. J. O

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's Imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission."

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested [X]

Service Performed By Shipper [ ]

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per H. H.

Post office address of shipper, Milwaukee 1, Wis., U. S. A.

Agent, Per

PRINTED BY THE STRAUSS-WISEMAN CO., [illegible]

V 7551

(p. 699 - 1073)

SHIPPING ORDER

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

RECORDED PROD. DEPT.

W 9[illegible]

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B.L. NO.

ILL • [illegible] & WRIGHT
1513 12TH AVE
• SEATTLE WASH

IT

SHIP TO •

IT
HIP VIA SEATTLE WASH DATE SHIPPED OCT 10 1916 V 10447

DATE OF LAST ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
DATE RECEIVED 10 4 50	FILLED BY	CHECKED BY	SHIPPED BY PROX			INSURANCE
102						

QUANTITY ORDERED	PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
1	CA14	JACK	71 40		71 40	
					3 12	

FREIGHT ALLOWANCE

INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

SEATTLE
TACOMA
SPOKANE
PORTLAND
SALEM
EUGENE

PURCHASE ORDER

BALLOU & WRIGHT

WHOLESALE

"The Automotive House Complete"

1813-15-17 TWELFTH AVENUE

SHOW THIS **No 9765**

ON ALL INVOICES
DELIVERY SLIPS CASH
PACKAGES ETC.

SEATTLE WASH October 30th 19 45

SHIP TO

Blackhawk Mfg. Co.

Milwaukee, Wisconsin

Ballou & Wright

Spokane, Wash.

INVOICE MUST SHOW ORDER NUMBER AND BE ACCOMPANIED BY THE ORIGINAL BILL OF LADING OR ORIGINAL SHIPPING RECEIPT.

SHIPPERS WILL BE HELD RESPONSIBLE FOR ANY LOSS OCCASIONED BY DELAY OR DAMAGE IN TRANSIT UNLESS ABOVE INSTRUCTIONS ARE FOLLOWED

Quantity Wanted		Quantity Received

INSURE VIA [illegible] SHIPPING INSTRUCTIONS

MARK and [illegible] ASSOCIATION
SHIP TO, 900 SOUTH WELLS ST. CHICAGO, ILL.

SUB- [illegible] FOR:

SHIP

SHIP THIS ORDER WITHIN 30 DAYS OF DATE SPECIFIED OR CANCEL AND NOTIFY US

only Qd 11 Blackhawk 50 ton Jack 71.40

W 9712

Salesman Gibson (2)
Discount 2%
NOV 2 1945
Terms 2% 10th PROX.
Credit O. K.

SEND LIST OF ALL GOODS BACK ORDERED OR CANCELLED

(p. 703 1075)

(Rev. 15, 1927, as revised Aug. 1, 1929 & Apr. 15, 1941.)

BILL OF LADING — ORIGINAL — Not Negotiable

(Not a Receipt of the Property described in this Bill of Lading.)

[illegible]K MF[illegible] CO.

Shipper's No.

Agent's No. W 9712

Company

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to the usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Ballou & Wright (Mail or street address of consignee—For purposes of notification only.)

Destination Spokane State of Wash. County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments				Crates Steel Display Cabinets W-O Glass		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments				Boxes Steel Display Cabinets W-O Glass		
	Boxes Wrenches, N.O.I.B.N. With Attachments				W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Machines, N.O.I.B.N.S.N.				Boxes Display Rack Base K. D.		
	Crates Machines, N.O.I.B.N.S.N.				Fibre Boxes [illegible]		
	Fibre Boxes Machines, N.O.I.B.N.S.N.				Jacks Wheeled		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Fibre Boxes Jacks Wheeled		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Boxes Jack Wheeled		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.			3.12	Boxes Iron or Steel Jack Parts		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Fibre Boxes Iron or Steel Jack Parts		
	Fibre Boxes Jacks Not Wheeled				Iron or Steel Jack Parts		
1	Boxes Jacks Not Wheeled	112 279			Fibre Boxes Tools - N.O.I.B.N.		
	Crates Jacks Not Wheeled				Boxes Tools - N.O.I.B.N.		
	Crates Store Display Racks K. D. Flat						
	Fibre Boxes Store Display Racks S. U.						
	Boxes Store Display Racks K. D. FLAT						
	Boxes Store Display Racks K. D. Flat						
	Boxes Tool Display Racks						
	Crates Tool Display Racks						

1

CHIEFMAN MOTOR DELIVERY
LEO THOMPSON

"Shipper's Imprint" in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

Pick-Up Service Requested

[illegible]MPANY, Shipper

[illegible] DEPT.

SHIPPING ORDER

JAN 19 1945

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

[illegible]

T 95032

T [illegible]

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO.

BILL TO : THE SALT LAKE [illegible] CO

AT : SALT LAKE CITY UTAH

SHIP TO : [illegible] MOTOR PARTS CO

AT

SHIP	VIA	DATE SHIPPED
[illegible]	PRICE UTAH THRU P C W A	JAN 15 1946

011957

DATE OF CUST. ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
1 9 45 E	[illegible]	WEATHERLY A	[illegible]			

DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY	INSURANCE
112	4 70		[illegible]	

QUANTITY ORD.	QUANTITY ORDERED		PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
		4	[illegible]	[illegible]	[illegible]		31 64	

SPECIAL SHIPPING INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

Ordered by [redacted]

Approved by

GENERAL OFFICES
SALT LAKE CITY
UTAH

PURCHASE ORDER

The Salt Lake Hardware Co.

BRANCH HOUSES
Boise, Idaho
Grand Junction, Colo.

(p. 707 1077)

No. SLH 37573 C

Date January 9, 1945

Subject to the conditions stated on this order, please charge to us at Salt Lake City and

SHIP TO

Blackhawk Mfg Company
Milwaukee 1,
Wisconsin

tor Parts Company
rice,
ah

THIS ORDER IS FOR—

TERMS			
F. O. B.			
FRT. ALLOWANCE			
NUMBER, SIZE AND DESCRIPTION	QUANTITY		Supplier's Record of Deliveries
AA 8.5 Blackhawk Auto Jacks	ea	1303	

AA1 MRO

Salesman
Discount

JAN 12 1945

2% 10 NET 30

The undersigned purchaser certifies, subject to the penalties of section 35 (A) of the United States Criminal Code, to the seller and to the War Production Board, that to the best of his knowledge and belief, the undersigned is authorized under applicable War Production Board regulations or orders to place this delivery order, to receive the articles ordered for the purpose for which ordered, and to use any preference rating or allotment number or symbol which the undersigned has placed on this order.

The Salt Lake Hardware Co.

By [redacted]

WPB 2734 CMP Reg. 7

Important Notice To Supplier:

Invoice in Triplicate, priced, and furnish a separate invoice for each Purchase Order.

Our Order Number, with letters SLH preceding it, must be shown on each container on all Parcel Post, Express or less than Carlo[ad] [ship]ments (not [in] our lot shi[pments]. When ship[ping] freight the or[der] ber must also on the Bill of

Mail to us [at] of SALT LAK[E] UTAH regard[ing] destination of ment, Origina[l] ping Receipt and In[voice] in Triplicate—Priced.

ROUTE SHIPMENT VIA

THE SALT LAKE HARDWARE CO.
SALT LAKE CITY, UTAH

BY [redacted]

(P. 709: 1078)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 16, 1941.)

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No.

Milwaukee 1, Wis., 1-15. 194 1.

No. Tq 1032

Issue - Boyer Company

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Ford Chevrolet

Consigned to Motor Parts Co.

(Mail or street address of consignee—For purposes of notification only.)

Destination Price State of Utah County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	
	Boxes Wrenches, N.O.I.B.N. W-S Attachments				Crates Steel Display Cabinets W-O Glass		
	Fibre Boxes Wrenches, N.O.I.B.N. W-S Attachments				Boxes Steel Display Cabinets W-O Glass		
	Boxes Wrenches, N.O.I.B.N. With Attachments				W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Machines, N.O.I.B.N.S.U.				Boxes Display Rack Base K. D.		
	Crates Machines, N.O.I.B.N.S.U.				IN STLS. Fibre Boxes Lubricating Oil N.O.I.B.N.		
	Fibre Boxes Machines, N.O.I.B.N.S.U.				Jacks Wheeled		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Fibre Boxes Jacks Wheeled		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Boxes Jacks Wheeled		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Boxes Iron or Steel Jack Parts		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Fibre Boxes Iron or Steel Jack Parts		
	Fibre Boxes Jacks Not Wheeled				Iron or Steel Jack Parts		
1	Boxes Jacks Not Wheeled	81			Fibre Boxes Tools - N.O.I.B.N.		
	Crates Jacks Not Wheeled				Boxes Tools - N.O.I.B.N.		
	Crates Store Display Racks K. D. Flat						
	Fibre Boxes Store Display Racks S. U.				NO FREIGHT ALLOWANCE		
	In K. D. FLAT Bdls. ( ) Cartons Store Display Racks						
	Boxes Store Display Racks K. D. Flat -				3		
	Boxes Tool Display Racks						
	Crates Tool Display Racks						

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Shipper's ... terms of condition ... the shipment is to be delivered ... to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this order without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

Pick-Up Service Requested ☐

Service Performed By Shipper ☐

MANUFACTURING COMPANY, Shipper, Per

Agent, Per

Office address of shipper, Milwaukee 1, Wis. U. S. A.

STOCK PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

(p. 713 1080)

RECORDED
CHECKED

SHIPPING ORDER

1 0 1564

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

I 70801

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO.

BILL TO · THE SALT LAKE HOME CO

AT · SALT LAKE CITY UTAH

SHIP TO · ABOVE
P C W A

AT

SHIP	VIA	DATE SHIPPED
[redacted]	Trans Amer	JAN 2 - 1946

DATE OF OUT ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
[redacted]	[redacted]	[redacted]				

DATE RECEIVED	FILED BY	CHECKED BY	SHIPPED BY	INSURANCE
[redacted]	998	457	11	

QUANTITY BK. ORD.	QUANTITY ORDERED		PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
4	[redacted]	1.	[redacted]	[redacted]	15 37			
	1	1.	B4	Jaire ✓	5 30			
							20 67	

U 31796

SPECIAL SHIPPING INSTRUCTIONS

V 7480

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

(P. 715 1081)

SALT LAKE CITY PURCHASE ORDER

GENERAL OFFICES
SALT LAKE CITY
UTAH

The Salt Lake Hardware Co.

BRANCH HOUSES
Boise, Idaho
Grand Junction, Colo.

No 37095

Approved by [illegible]

Date August 3, 1944

Subject to the conditions stated on this order, please charge to us at Salt Lake City and

AIR MAIL

SHIP TO

8/30 9/30 10/30 11/14

Blackhawk Mfg Company
Milwaukee 1,
Wisconsin

The Salt Lake Hardware Co.
Salt Lake City,
Utah

THIS ORDER IS FOR STOCK—

TERMS:
F. O. B.
FRT. ALLOWANCE

Supplier's Record of Deliveries

NUMBER, SIZE AND DESCRIPTION	QUANTITY
S-17 Blackhawk Curb Jack 15.37	5 ~~10~~ only
1st quarter 1945	
Priority rating will follow	
Hold	
Jean 10/31	

T 7089

AA 3 | | DX

Salesman Weatherly

Discount ---- 2% 10 ----

AUG 10 1944

Terms 2% 10 NET 30

Credit O. K.

Important Notice To Suppliers

Invoice in Triplicate, priced, and furnish a separate invoice for each Purchase Order.

Our Order Number must be shown on each container on all Parcel Post, Express or Less than Carload Shipments (not required in our 1st shipments.) When shipped by freight, the order number must also appear on the Bill of Lading.

Mail to us promptly at SALT LAKE CITY, UTAH, regardless of destination of Shipment. Original Shipping Receipt and Invoice in Triplicate—Priced.

ROUTE SHIPMENT VIA

SHIP TO PACIFIC COAST WHOLESALERS ASSN
900 South Wells St. [illegible]
Mark all packages for [illegible]
mailing original B/L to [illegible]

THE SALT LAKE HARDWARE CO.
SALT LAKE CITY, UTAH

BY [signature]

(P. 717 1082)

Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1931.

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading nor a copy or duplicate, covering the property named herein, and is intended solely for the purpose of prepaying charges on property RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No.

At Milwaukee 1, Wis., 194

No.

Company

(Mail or street address of consignee—For purposes of notification only.)

Consigned to

Destination City State of County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N.				Crates Steel Display Cabinets W-O Glass		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments				Boxes Steel Display Cabinets W-O Glass		
	Boxes Wrenches, N.O.I.B.N.				Fibre Boxes Steel Display Cabinets W-O GLASS		
	Boxes Machines, N.O.I.B.N.S.N.				Boxes Display Rack Base K. D.		
	Crates Machines, N.O.I.B.N.S.N.				Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
	Fibre Boxes Machines, N.O.I.B.N.S.N.				Jacks Wheeled		
	Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, Boxed			4	Fibre Boxes Jacks Wheeled	230288	
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, Boxed				Boxes Jacks Wheeled		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Boxes Iron or Steel Jack Parts		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Fibre Boxes Iron or Steel Jack Parts		
	Fibre Boxes Jacks Not Wheeled				Iron or Steel Jack Parts		
	Boxes Jacks Not Wheeled				Fibre Boxes Tools - N.O.I.B.N.		
	Crates Jacks Not Wheeled				Boxes Tools - N.O.I.B.N.		
	Crates Store Display Racks K. D. Flat						
	Fibre Boxes Store Display Racks S. U.						
	Bdls. ( ) Cartons Store Display Racks K. D. FLAT				3		
	Boxes Store Display Racks K. D. Flat						
	Boxes Tool Display Racks						
	Crates Tool Display Racks						

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

2.06

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested ☑ Service Performed By Shipper ☐

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per

Agent, Per

U 14505

Permanent postoffice address of shipper, Milwaukee 1, Wis., U. S. A.

B 81400 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

(p. 719 1083)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1931.)

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy of the Bill of Lading, covering the property named herein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No. V57992

At Milwaukee Wis. 1 34 No. U 27150 U 31796 U 47463

1 Ford Company

(Main or street address of consignee—For purposes of notification only.)

Consigned to

Destination State of County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Wrenches, N.O.I.B.N. With Attachments		
	Boxes Machines, N.O.I.B.N.S.U.		
	Crates Machines, N.O.I.B.N.S.U.		
	Fibre Boxes Machines, N.O.I.B.N.S.U.		
	Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, bound		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, bound		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Fibre Boxes Jacks Not Wheeled		
1	Boxes Jacks Not Wheeled	202 227	
	Crates Jacks Not Wheeled		
	Crates Store Display Racks K. D. Flat		
	Fibre Boxes Store Display Racks S. U		
	Bdls. ( ) Cartons Store Display Racks K. AT		
	Boxes Store Display Racks K. D. Flat		
	Boxes Tool Display Racks		
	Crates Tool Display Racks		

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Crates Steel Display Cabinets W-O Glass		
	Boxes Steel Display Cabinets W-O Glass		
	W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Display Rack Base K. D.		
	Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
1	Jacks Wheeled	125 227	
1	Fibre Boxes Jacks Wheeled	10 288	
	Boxes Jacks Wheeled		
2	Boxes Iron or Steel Jack Parts	103 227	
	Fibre Boxes Iron or Steel Jack Parts		
	Iron or Steel Jack Parts		
	Fibre Boxes Tools - N.O.I.B.N.		
	Boxes Tools - N.O.I.B.N.		
3			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

13.37

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

*Shipper's imprint in lieu of stamp, not a part of bill of lading approved by the Interstate Commerce Commission

*If the shipment moves between two ports by a carrier by water the law requires that the bill of lading shall state whether it is carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested ☐ Service Performed By Shipper ☐

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per Agent, Per U 10957

Permanent postoffice address of shipper, Milwaukee 1, Wis., U. S. A.

B 81400 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

(P. 711 1079)

SHIPPING ORDER

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

V 7480

AAJ FBX

BILL TO · THE SALT LAKE HOME CO

AT · SALT LAKE CITY UTAH

SHIP TO ·

AT ABOVE THRU P C W A

CHECKED

PRICED

PRICES CHECKED

ENDED

EXTENSIONS CHECKED

SHIP VIA	DATE SHIPPED				
TRANSFER	FEB 14 1946			14/505	
DATE OF CUST. ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
1-31-46	37773	WEATHERLY A	2/10 30			
DATE RECEIVED	FILED BY	CHECKED BY	SHIPPED BY			INSURANCE
20910-1	476		TF			

QUANTITY BK.ORD.	QUANTITY ORDERED	PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
4	4	817	JACKS	3 37		61 48	
			FREIGHT ALLOWANCE			8 04	
							53 42

BACK ORDER

SPECIAL SHIPPING INSTRUCTIONS

RECEIVED PRODUCTION CONTROL

SHIPPING ORDER

AUG 20 1945

(P. 721 1084)

U 71711

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

AA1 NRO

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B L NO

BILL TO . [illegible] HASELTINE [illegible]
[illegible] AVE & ASH ST
AT . [illegible] LAND 4 OHE

SHIP TO . AMONI
THRU P C W A

AT

SHIP VIA DATE SHIPPED OCT 10 1945

IMM

DATE OF CUST ORDER	CUST ORDER NO	SALESMAN	TERMS	ZONE	WEIGHT	INSURANCE
8 21 45M	321-, NX	PROMR 3 M	2 10 30			

DATE RECEIVED	BILLED BY	CHECKED BY	SHIPPED BY	INSURANCE
8-3				

QUANTITY B.O.	QUANTITY ORDERED	PART NO	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
1	1	531	PORTO POWER	57 79		57 79	

[illegible] ALL RIGHT

[illegible]

SPECIAL SHIPPING INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

(P.723 1085)

IRON STEEL PIPE

J. E. Haseltine & Co.

Phone AT. 7511

HEAVY HARDWARE — MILL AND SHOP SUPPLIES
WELDING EQUIPMENT — AUTOMOTIVE HARDWARE
PIPE-VALVES-FITTINGS — MECHANICAL-RUBBER GOODS

2ND AVE & ASH ST — PORTLAND 4, OREGON

8/21/45

AIR MAIL

BLACKHAWK MFG COMPANY
MILWAUKEE, WISCONSIN

ORDER NO. 82146 KX

PURCHASE ORDER

SHIPPING INSTRUCTIONS:
SHIP TO: US — PACIFIC COAST WHOLESALERS' ASSOCIATION
900 S. WELLS, CHICAGO, ILLINOIS
MARK PACKAGES OUR ACCOUNT

RENDER INVOICES PROMPTLY IN DUPLICATE AND MAIL SAME WITH SHIPPING RECEIPT TO PORTLAND. SHOW NUMBER OF THIS PURCHASE ORDER ON INVOICES, PACKING LISTS AND PACKAGES.

QUANTITY ORDERED	DESCRIPTION
1 only	551 Blackhawk parts power set. 5779

All
Salesman
Checked
AUG 23 1945
2% 10 NET 30
Terms
Credit O. K.

Rating AA1 Allotment No. M. R. O.

CMP-5 CERTIFICATION

The undersigned purchaser certifies, under the provisions of Section 35 (a) of the United States Code and Controlled Materials Plan Regulations of the War Production Board, that, to the best of his knowledge and belief, the delivery ordered for the production of [illegible] will be made in accordance with the applicable rating or allotment number or symbol set forth by the undersigned [illegible] order.

Firm Name J. E. Haseltine & Company

By R Kruethner — Buyer — Date 8/21/45
Signature and Title of Duly Authorized Officer

J. E. HASELTINE & COMPANY

R Kruethner

Buyer

RK:VC

(P. 725 - 1086)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1928 & June 18, 1934.)

UNIFORM STRAIGHT BILL OF LADING — ORIGINAL — Not Negotiable

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No.

At Milwaukee 1, Wis., 10-30 1946

No. L 72660
L 70711
W 36509
W 5141

Customer Company

Consigned to J E Haselline & Co

(Mail or street address of consignee—For purposes of notification only.)

Destination Portland State of Oregon County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate	No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments				Crates Steel Display Cabinets W-O Glass		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments				Boxes Steel Display Cabinets W-O Glass		
	Boxes Wrenches, N.O.I.B.N. With Attachments				W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Machines, N.O.I.B.N.S.U.				Boxes Display Rack Base K. D.		
	Crates Machines, N.O.I.B.N.S.N.				Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
	Fibre Boxes Machines, N.O.I.B.N.S.U.				Jacks Wheeled		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Fibre Boxes Jacks Wheeled		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, boxed				Boxes Jacks Wheeled		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.			5	Boxes Iron or Steel Jack Parts	590 284	
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.				Fibre Boxes Iron or Steel Jack Parts		
	Fibre Boxes Jacks Not Wheeled				Iron or Steel Jack Parts		
	Boxes Jacks Not Wheeled				Fibre Boxes Tools - N.O.I.B.N.		
	Crates Jacks Not Wheeled				Boxes Tools - N.O.I.B.N.		
	Crates Store Display Racks K. D. Flat				1		
	Fibre Boxes Store Display Racks S. U.						
	Bdls. ( ) Cartons K. D. FLAT Store Display Racks						
	Boxes Store Display Racks K. D. Flat						
	Boxes Tool Display Racks						
	Crates Tool Display Racks						

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

16.76

Rec'd $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's Imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested ☒ Service Performed By Shipper ☐

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per

Agent, Per

11714

Permanent postoffice address of shipper, Milwaukee 1, Wis., U. S. A.

PRINTED BY [illegible] MILWAUKEE 1, WISC., U. S. A.

(P. 727 1087)

SHIPPING ORDER

MAY 1 1946

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

W 3967

RECORDED P.O.J. DEPT.

SOLD TO

AT

SHIP TO

AT

E BUCKMAN METALS & SUPPLY CO
4890 SOUTH ALAMEDA ST
LOS ANGELES CALIF

ABOVE
THRU P C W A

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO

SHIP	VIA	DATE SHIPPED			
		JUL 29 1946			
DATE OF CUST. ORDER	CUST. ORDER NO.	SALESMAN	TERMS	ZONE	WEIGHT	POSTAGE
DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY			INSURANCE

QUANTITY B/ORD.	QUANTITY ORDERED		PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
1	1		3967	PORTO POWER	35 56		35 56	

FREIGHT ALLOWANCE

W 11068

SPECIAL SHIPPING INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

(P. 729 1088)

DUCOMMUN
METALS & SUPPLY CO.

INDUSTRIAL SUPPLIES · TOOLS · METALS · TUBULAR PRODUCTS

DUCOMMUN SINCE 1849

LOS ANGELES, CALIF. 54
P O BOX 2117 TERMINAL ANNEX

Purchase Order No. X 14874

Number each case or Parcel and furnish Packing List of Contents. Each package must be marked exactly in accordance with Bill of Lading.

ACKNOWLEDGE RECEIPT of this order and advise Date of Shipment.

2 INVOICES WITH PRICES
1 INVOICES WITHOUT PRICES

On all Invoices, Bills of Lading and Manifests Place Order No. X 14874 Date Oct 4, 1945

To

Blackhawk Mfg. Co
Milwaukee 1, Wis.

K. H. Hillyer Buick #--

SHIP TO
PACIFIC COAST WHOLESALERS' ASSN.
900 South Wells St., · Chicago, Ill.
ACCORDING TO STANDING INSTRUCTIONS

Ship

For Us

Ship Via

FORM A18 25M 10-44

Due at destination 11-1-45 or before

ITEM NO.			
	1	only	S-87 Blackhawk Porto Power Assortment

35 - 0

W39.67

Salesman - Spatola
Discount ---- 2%

OCT 8 1945
2% 10 NET 30

KPL:E

DUCOMMUN METALS & SUPPLY CO
Los Angeles, Calif.

E. P. Leis

Manager Tool Dept
Buyer: E. Smith

(p. 731 1089)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 16, 1931.)

UNIFORM STRAIGHT BILL OF LADING — ORIGINAL — Not Negotiable

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

FROM BLACKHAWK MFG. CO.

Shipper's No.

Agent's No.

At Milwaukee 1, Wis., 7-1-1946

No. W20471 W.B. 5F W25738
W.B. 7e V.396 V.10329
W.B. 29e V.12/5
W.B. 2e V.1504

California County

(Address of consignee—For purposes of notification only.)

Consigned to

Destination State of County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Subject to Corr.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Wrenches, N.O.I.B.N. With Attachments		
	Boxes Machines, N.O.I.B.N.S.U.		
	Crates Machines, N.O.I.B.N.S.U.		
	Fibre Boxes Machines, N.O.I.B.N.S.U.		
	Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, boxed		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel In boxes or chests or cabinets, boxed		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Fibre Boxes Jacks Not Wheeled		
2	Boxes Jacks Not Wheeled	159 279	
	Crates Jacks Not Wheeled		
	Crates Store Display Racks K. D. Flat		
	Fibre Boxes Store Display Racks S. U.		
	Bdls.-( ) Cartons Store Display Racks K. D. FLAT		
	Boxes Store Display Racks K. D. Flat		
	Boxes Tool Display Racks		
	Crates Tool Display Racks		

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Corr.)	Class or Rate
	Crates Steel Display Cabinets W-O Glass		
	Boxes Steel Display Cabinets W-O Glass		
	W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Display Rack Base K. D.		
	Fibre Boxes Lubricating Oil	184	25
	Jacks Wheeled		
	Fibre Boxes Jacks Wheeled		
	Boxes Jacks Wheeled		
2	Boxes Iron or Steel Jack Parts	27 284	
1	Fibre Boxes Iron or Steel Jack Parts	23 284	
	Iron or Steel Jack Parts		
	Fibre Boxes Tools - N.O.I.B.N.		
	Boxes Tools - N.O.I.B.N.		
1	Wooden Box 1	24 284	

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges."

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

Pick-Up Service Requested ☒ Service Performed By Shipper ☐

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per

Permanent postoffice address of shipper, Milwaukee Wis U. S. A.

Agent, Per

V 5417

PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

(p. 733 1090)

RECOM... PROD. DEPT.

SHIPPING ORDER

BLACKHAWK MFG. CO.

MILWAUKEE 1, WIS.

T 77684

CHECKED

PRICED

PRICES CHECKED

EXTENDED

EXTENSIONS CHECKED

B/L NO.

Aug 1944

BILL TO • CHANSLOR & LYON CO
740 POLK ST
• SAN FRANCISCO CALIF

AT

SHIP TO • Same as above

AT

SHIP	VIA	DATE SHIPPED		ZONE	WEIGHT	POSTAGE
		FEB 26 1946				
DATE OF CUST. ORDER	CUST. ORDER NO.	SALESMAN	TERMS			INSURANCE
1 NOV 11 22 AUG	5[illegible]	[illegible]	2 10 PROX			
DATE RECEIVED	FILLED BY	CHECKED BY	SHIPPED BY			
1187	116	119	JA			

QUANTITY ORDERED	QUANTITY SHIPPED		PART NO.	DESCRIPTION	UNIT PRICE	UNIT TOTAL	NET TOTAL	INVOICE AMOUNT
5	5.		017	JACKS	15 37		76 85	
				✓			3350	
				FREIGHT ALLOWANCE				4335

SPECIAL SHIPPING INSTRUCTIONS

WEIGHTS AND MEASUREMENTS SHOULD BE NOTED ON BACK OF THIS ORDER

FORM D-10-40 SETS PAD GENERAL OFFICES
SAN FRANCISCO, CALIFORNIA

ORIGINAL
PURCHASE ORDER

CHANSLOR & LYON CO.

(P.735 1091)

Mail Invoices in Duplicate to
740 POLK STREET
SAN FRANCISCO,
CALIFORNIA
For Payment and Auditing

№ 58681

DATE . . , 19 .

To Black . . .

5325 . . .

Milwaukee, 1, . . .

CHARGE TO STORE

San Francisco

SHIP VIA TRANSAMERICAN FREIGHT LINES, INC.

To— PACIFIC COAST WHOLESALERS' ASSN.
300 So. Wells Street, Chicago, . .

SUB-MARKED

Chanslor & Lyon Co.

TOWN STATE
. . . C, . . .

ON HAND		QUANTITY	DESCRIPTION
		5	S-17 Jack 1537 AA-7

SPECIAL INSTRUCTIONS

1. SHOW ORDER NUMBER NUMBER OF CASES WEIGHT ON ALL BILLS OF LADING AND INVOICES

2. SEND ORIGINAL BILL OF LADING WITH INVOICE

3. INVOICES DATED LAST THREE DAYS OF THE MONTH WILL BE CONSIDERED DATED FIRST OF THE MONTH FOLLOWING AND DISCOUNTED ACCORDINGLY. PAYMENTS SUBJECT TO CASH DISCOUNT ON 10TH PROX.

SAME CONSECUTIVE . . . MENT AS SHOWN ON THIS ORDER

. . . SHIPPED.

6. SHOW ORDER NUMBER AND YOUR MARK ON ALL CASES.

7. ADDRESS ALL CORRESPONDENCE RELATIVE THIS ORDER TO STORE BUYER AND REFER TO ORDER NUMBER.

8. MAKE SEPARATE INVOICE FOR EACH ORDER.

9. IF ABOVE INSTRUCTIONS ARE NOT FOLLOWED SHIPPER WILL BE RESPONSIBLE FOR DELAYS AND ACCRUING TRANSIT OR EXCESS CHARGES.

T 77614

CERTIFICATION

The undersigned purchaser hereby represents to the seller and to the War Production Board that he is entitled to . . . of the . . . indicated opposite . . . and that such . . . or enlargement is not . . . with priorities . . . such . . .

For . . .

Certificate . . . 890273 . . . isco

. . . 11-22-44 . . . Authorized . . .
Date Chief Purchasing Agent

It is . . . that all . . . under . . . of . . .

113

NOV 27 1944

2%

10th

. . . 15TH ST.
SACRAMENTO

. . . 10TH STREET
MODESTO

1528 BROADWAY
FRESNO

. . . ST.
STOCKTON

1423 SO. GRAND AVE.
LOS ANGELES

3418 CHESTER AVE
BAKERSFIELD

SELLER AGREES TO INDEMNIFY US AGAINST CLAIMS, DAMAGES AND EXPENSES ARISING OUT OF ANY . . . LITIGATION IN CONNECTION WITH ARTICLE PURCHASED.

APPROVED A. M. Hastings

GENERAL PURCHASING . . . NT

NUMBER OF SHEETS 1

BY . . .

(p. 737 1092)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930 & June 15, 1941.)

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record. RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

FROM **BLACKHAWK MFG. CO.**

Shipper's No.

Agent's No.

At Milwaukee 1, Wis., 2-26 194 6

No. T 77684
V 13652
U 20884
U 23062

Trans-Amer Company

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Clayton & Lyon Co (Mail or street address of consignee—For purposes of notification only.)

Destination San Francisco State of Calif County of

Route

Delivering Carrier Car Initial Car No.

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Fibre Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Wrenches, N.O.I.B.N. W-O Attachments		
	Boxes Stockers, N.O.I.B.N.S.N.		
	Cartons Stockers, N.O.I.B.N.S.N.		
	Fibre Boxes Stockers, N.O.I.B.N.S.N.		
	Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, Boxed		
	Fibre Boxes Wrench Sets, Sockets, Iron or Steel in boxes or chests or cabinets, Boxed		
	Fibre Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Boxes Tool Boxes, Iron or Steel, N.O.I.B.N.		
	Fibre Boxes Jacks-Not Wheeled or		
1	Boxes Jacks Not Wheeled	50 335	
	Cartons Jacks Not Wheeled		
	Cartons Store Display Racks K. D. Flat		
	Fibre Boxes Store Display Racks K. D.		
	K. D. FLAT Cartons Store Display Racks		
	Boxes Store Display Racks K. D. Flat		
	Boxes Tool Display Racks		
	Cartons Tool Display Racks		

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Cor.)	Class or Rate
	Cartons Steel Display Cabinets W-O Glass		
	Boxes Steel Display Cabinets W-O Glass		
	W-O GLASS Fibre Boxes Steel Display Cabinets		
	Boxes Display Rack Boxes K. D.		
	Fibre Boxes Lubricating Oil IN BTLS. N.O.I.B.N.		
	Jacks Wheeled		
5	Fibre Boxes Jacks Wheeled	350 335	
	Boxes Jacks Wheeled		
1	Boxes Iron or Steel Jack Parts	148 335	
	Fibre Boxes Iron or Steel Jack Parts		
	Iron or Steel Jack Parts		
	Fibre Boxes Tools - N.O.I.B.N.		
	Boxes Tools - N.O.I.B.N.		
3			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

33,50

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

If the shipment moves between two ports by a carrier by water the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
*Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Pick-Up Service Requested ☒ Service Performed By Shipper ☐

BLACKHAWK MANUFACTURING COMPANY, Shipper, Per [signature]

Permanent postoffice address of shipper, Milwaukee 1, Wis., U. S. A.

TFL Agent, Per [signature] U 15487

B 81400 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

Note:

Page 739 is located over
guard hole on this card.

(P. 741 - 1094)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, and Western Illinois Classification Territories, March 18, 1922, as amended August 1, 1930, and June 16, 1941)

THIS MEMORANDUM is for acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

(PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION)

P C W A

Co. Agent's No. [redacted]
Shipper's B/L No.

RECEIVED, subject to the classifications and tariffs in effect on the date of receipt by the carrier of the property described in the Original Bill of Lading,

at CHICAGO, U. S. A., [redacted], 194___ From **The Imperial Brass Mfg. Co.,**

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to [redacted]

(Mail or street address of consignee—For purposes of notification only.)

Destination [redacted] State of [redacted] County of

Route SAN DIEGO CALIFORNIA

Delivering Carrier [redacted] Car Initial & No.

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subj. to Cor.)	CLASS or RATE	CHECK COLUMN
	BRASS PIPE FITTINGS, N.O.I.B.N. NOT PLATED			
	BRASS VALVES			
[redacted]	COPPER TUBING	[redacted]		
	BRONZE ROD			
	STEEL ROD			
	BATHROOM OR LAVATORY FIXTURES other than China or Earthenware			
	STEEL COCKS			
	WELD. & CUTT. OUTFIT OXY. ACET.			
	PNEUMATIC TOOLS			
	FAUCETS -ZINC ALLOY			
	MECH. HAND TOOLS, N.O.I.B.N.			
	POWER PUMPS			
	I/S AUTO PARTS, N.O.I.B.N. CHOKES			
	GASOLINE FILTERS GLASS & ZINC ALLOY			
	RUBBER HOSE RUB & FAB. COMB. With Wire Reinforcement & Conn			
	COUPLING ELBOWS & JOINTS other than Expansion Joints			
	BRASS, BRONZE OR COPPER NOT PLATED			
	STEEL TUBING COPPER & TIN COATED less than ½ O.D. Straight Lengths			
	ALUMINUM OR BRASS ALLOY FORGING			
	BRASS VALVE STEEL COMBINED			

No. A 20638

Subject to Section 7 of conditions if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges:

(Signature of consignor)

If charges are to be prepaid, write or stamp here "To be Prepaid."

PREPAID

Received $ _____ to apply in prepayment of the charges on the property described hereon.

[redacted] 1945

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ _____

"The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification."

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
Note Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property
is hereby specifically stated by the shipper to be not exceeding _____ per _____

The Imperial Brass Manufacturing Co., Shipper. _____ Agent

Per [redacted]

Permanent Post Office address of shipper 1200 W. Harrison St.

Form 836-S 64115

(p. 743 - 1095) 12

PLACE SPECIAL SERVICE PASTERS HERE

COPY

FREIGHT WAYBILL

To be used for Simple Consignments, Carload and Less Carload

STEAMSHIP OR STEAMBOAT CO. | FOR | WEIGHT IN TONS: Gross / Tare / Net | LENGTH OF CAR: Ordered / Furnished | MARKED CAPACITY OF CAR: Ordered / Furnished

CAR INITIALS AND NUMBER | CL Transferred to or LCL Loading No. | CODE NO. | TRANSPORTATION COMPANY | CODE NO.

COMMERCIAL

THIS DATA ADDED BY CARRIER

TO | STATION | STATE | FREIGHT BILL DATE | FREIGHT BILL No. | WAYBILL DATE | WAYBILL No.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill)

FROM STATION: Racine, Wisconsin | STATE

No. (

DATE: 10 18 46

SHIPPER'S NUMBER: 42736

FULL NAME OF SHIPPER: **Walker Manufacturing Company**

CONSIGNED TO (Mail or street address of consignee—For purposes of notification only)

SALT LAKE HARDWARE COMPANY C/O C D CHENEY

DESTINATION: EVANSTON | STATE OF: WYOMING | COUNTY OF

ROUTE Designated by Shipper: PCWA

DELIVERING CARRIER

Received $ _____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $

← If charges are to be prepaid, write or stamp here, "To Be Prepaid."

Subject to Section 7 of Conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

WALKER MFG CO

SIGNATURE OF CONSIGNOR

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ PER _____

WEIGHED AT

GROSS | TARE | ALLOWANCE | NET

Indicate by symbol in column provided if how weights were obtained for LCL Shipments only. R—Railroad Scale. S—Shipper's Tested Weights. E—Estimated—Weight and Correct. T—Truck Classification or Minimum.

SHIPPER: WALKER MANUFACTURING CO.

PER (Permanent Post-office Address of Shipper): RB RACINE, WISCONSIN

No. Pkgs.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
3 CT	JACKS, N. O. I. B. N., Not Wheeled		153-				
	JACKS, N. O. I. B. N., Wheeled						
	JACK PARTS, N. O. I. B. N.						
	AUTO LIFTS, K. D. ( ) Pcs. in Bdls.						
	LOOSE PCS. AUTO LIFTS, K. D.						
	AUTO LIFT PARTS						
	DISPLAY STAND (Completely Taken Apart)						
	(Pcs.) EXHAUST OR TAIL PIPES, Steel						
	EXHAUST OR TAIL PIPES, Steel						
	OIL PETROLEUM, N. O. I. B. N. (In Metal Cans Completely Jacketed)						

4

We certify that this copy is a true and exact copy of the original.
WALKER MFG. CO.
Traffic Manager

RECEIVED
COMMERCIAL TRUCKERS
F. KIDDER

No. 20790

USCO Express System

EXHIBIT 34

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS ASSOCIATION

STATION LOS ANGELES DATE 10-8-45 REF NO. CLA 1595-3

SHIPPER: THE IMPERIAL BRASS MFG CO
1200 W HARRISON
CHICAGO ILL

CONSIGNEE: MOTOR HDWE & EQUIP CO
1133 COLUMBIA
SAN DIEGO CALIF

DATE OF SHIPMENT 9-28-45

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
1	CRT				
1	CTN COPPER TUBING	212	270		5 72
					17
			THRU		5 89
				PREPAID	7
	AN C 01400				

RECEIVED
MAILING DEPT

C81466

52

10-11

9x

739

1093

WALKER MANUFACTURING COMPANY

SOLD TO
THE SALT LAKE HARDWARE CO.
105 NORTH THIRD STREET
SALT LAKE CITY UTAH

SHIPPED TO
THE SALT LAKE HARDWARE CO
% C D CHENEY
EVANSTON WYOMING

SHIPPED VIA
COMMERCIAL PCWA 10 18 46

JACKS LIFTS SILENCERS

F O B RACINE WIS

DATE RECEIVED	WANTED	CUST'S ORDER NO.	SALESMAN	TERMS
10 4 46	AT ONCE	64431 G	VAN SCOTER	30 DAYS NET OR 2% CASH DISCOUNT 10th PROX. ON THE NET AMOUNT OF MERCHANDISE INVOICE
INVOICE DATE	INVOICE NO	B L NO	CAR NO	
10 28 46	41736	20790	B.C.	

QUANTITY	ITEM	DESCRIPTION	UNIT PRICE	EXTENSION	TOTAL
9	926	JACK	6 27	56 43	
		LESS FRT ALLOWED ON 153# AT 2 26 CWT		3 46	
					52 97

COPY

We certify that this copy is a true and exact copy of the original
WALKER MFG. CO.
Roger M. Fange
Traffic Manager

DUPLICATE INVOICE

745

1096

1098 *Exhibit 36*

Telephone
PRospect 3091

1633-35 So. Figueroa St.
Los Angeles 15, Calif.

March 27th, 1946

Ajax Auto Parts Co.
Racine, Wis.

Gentlemen:

If you will refer to our purchase order covering your recent shipment of 16 cartons of automobile jacks, you will find that we directed that shipment should be made through Pacific Coast Wholesalers Assoc., 900 Wells St., Chicago. This shipment has been received via Republic Carloading & Dist. Co., Inc. On any backorder from this current order on file, and on any future orders filed with you, you are instructed to route them to the Pac. Coast Wholeslrs. Assoc. and it is hoped that you will take the steps necessary to see that our routing instructions are adhered to.

Yours very truly

FEY & KRAUSE, INC.
By J. VINSON

J. O. Vinson:g
cc: P. C. W. A.
900 Wells St.
Chicago.

1099 Noted 4/17/46
A T W.
Mark
Route
P. C. W. A.

April 8, 1946

Fey & Krause, Inc.
1633-35 So. Figueroa Street
Los Angeles 15, California
Attn.: Mr. J. O. Vinson

Dear Sir:

In reply to your letter of March 27 with regards to routing shipments via Pacific Coast Wholesalers Assoc., 900 Wells Street, Chicago, please be advised that inasmuch as in allowing the freight on our invoice that we have reserved the

PER ALLOCATION

2

WALKER MANUFACTURING CO.

RACINE WIS

THE SALT LAKE HARDWARE CO
105 NORTH THIRD STREET
SALT LAKE CITY UTAH

THE SALT LAKE HARDWARE CO
C/O C D CHENEY
EVANSTON WYOMING

CR
OCT 1 - 1946
G

SERVICE - PCWA
AT ONCE 644016 VAN SCOTER

DATE 10 4 46

INVOICE NO 41736

FREIGHT WEIGHT ALLOWED

DATE	LBS	RATE WT	AMOUNT
[illegible]	[illegible]		[illegible]
		288	3 [illegible]
[illegible]		226	[illegible]

BACK ORDER SHIPPING RECORD

QUAN	ITEM	SHIPPED	B L	BAL

QUAN	ITEM	DESCRIPTION	SHIPPED	DATE	B L	BOLES	CARTON	WGT EACH	TOTAL WGT	BAL
1	784	JACK	1	[illegible]	[illegible]	1			[illegible]	
9	925	[illegible]	9	[illegible]	[illegible]		3	51	153	
3	930						1		60	
3	935		[illegible]	[illegible]	[illegible]		1		[illegible]	[illegible]
3	945		[illegible]				1		[illegible]	

SHIPPING ORDER

747

1097

right to control the routing on shipments consigned to the west coast.

We are not members of the Pacific Coast Wholesalers Assoc. and as a result savings reflected through the use of this carrier has no effect on freight allowance as allowed on our invoice.

We have in most instances followed the request of our customers but in using Pacific Coast Wholesalers Assoc. have been faced with considerable additional work with regards to rates, tracing, etc. We shall endeavor to follow the routing that you request, however, we suggest that you mark your purchase orders with the routing desired and if consistent with our freight allowance terms shall be happy to see that your routing instructions are adhered to.

Yours very truly,

Traffic Manager
Ajax Auto Parts Company

RMLange
ch

1100
267 West First South
Telephone 3-5831
P. O. Box 479
Salt Lake City 9, Utah
John Lang
General Manager

2312 Fairview Ave.
Telephone 5477
Boise, Idaho
Address Reply to
The Lang Company
Attention of O. W. Kasteler

April 20, 1946

Walker Manufacturing Company
Racine, Wisconsin.

Gentlemen:

Get file

During (the month of February we received a letter from you) acknowledging our request that you would forward shipments to Chicago for shipment via the Pacific Coast Wholesalers' Association.

Today, we have paid an original freight bill to the International Forwarding Company for 3,252 lbs. of freight as covered by our Purchase Order 70133, their rate being $2.80 per 100 weight whereas the rate shipped by the Pacific Coast Wholesalers' Association was about nineteen cents cheaper.

Will you therefore please arrange to make all future shipments via the Pacific Coast Wholesalers' Association. This will be very much appreciated.

Yours truly,

THE LANG COMPANY.
O. W. KASTELER
O. W. Kasteler
Purchasing Agent

1101 May 13, 1946

Hubert
Check route file
Noted H. Wade

The Lang Company
267 West First South
Salt Lake City 9, Utah

Attn.: Mr. O. W. Kasteler, Purchasing Agent

Dear Sir:

In reply to your letter of April 20, we are sorry to hear that you have received a shipment contrary to your routing instructions.

We are trying to follow your instructions to the best of our ability however, in the rush of things at the present time sometimes an error like this is made. We have advised the proper parties to watch more carefully in the future.

We trust that you will not have to report an error on our part in the future. However, as our freight allowance actually covers more than the freight allowance we hope that this did not inconvenience you to a great extent.

Yours very truly,

Traffic Manager,
Walker Manufacturing Company.

RMLange
ch

1102

Los Angeles
108 West Sixth Street
Trinity 6501

Chicago
900 Sixth Wells Street
Wabash 1675

Seattle
1618 Smith Tower
Main 7566

PACIFIC COAST WHOLESALERS' ASSOCIATION
G. A. Olson, General Manager
325 Central Bldg., 108 West Sixth St.
Los Angeles 14, Calif.

TRinity 6501

February 8, 1946

CSF 1058-14
CSF 1058-16
CSF 1058-17

Walker Manufacturing Co.
Racine, Wisconsin

Gentlemen:

On January 25th, you forwarded via Commercial Truckers Inc., 12 bdls., bxs., and loose pieces Auto Lifts, 1626 lbs.; on January 28th, you forwarded via Service Transportation Co. 24 bdls., bxs. and loose pieces Auto Lifts, 3252 lbs., and and on January 25th, you forwarded via Commercial Truckers Inc., 12 bdls., bxs. and loose pieces Auto Lifts, 1626 lbs., all consigned to the Pacific Coast Wholesalers' Association, Chicago, for enclosure in one of our pool cars at Chicago and which have been delivered to ultimate consignees, C. E. Hines, Tule Lake, California, Sloss & Glicksburg, 1155 Van Ness, San Francisco, California and H. J. Weiss, c/o Union Oil Co., Turlock, California, respectively.

This Association consolidates less-than-carload shipments at Chicago for its Members; such shipments move from Chicago to Pacific Coast terminals in consolidated pool cars by rail.

Only shipments consigned to our Members or which are are moving for the account of our Members are handled in these pool cars. We do not handle freight for the general public.

Inasmuch as C. E. Hines, Sloss & Glicksburg and H. J. Weiss are not members of this Association, we will appreciate it if you will advise us the name of our Member who instructed you to forward these shipments to us at Chicago for handling in our pool cars direct to C. E. Hines, Sloss & Glicksburg and H. J. Weiss.

Your early attention in the enclosed stamped addressed envelope will greatly assist us.

Yours very truly,

PACIFIC COAST WHOLESALERS' ASSN.,

L. GATES,

L. Gates—*Traffic Dept.*

LG:J
Encl.

1103 File

February 21, 1946

Pacific Coast Wholesalers' Association
325 Central Building
108 West Sixth Street
Los Angeles 14, California

Attn.: Mr. L. Gates, Traffic Dept.

Dear Sir:

In reply to your letter of February 8, your file CSF 1058-14, CSF 1058-16 and CSF 1058-17, may we please advise that it is almost impossible to check back to the original orders to find which of your members requested the shipments mentioned in your letter to be routed via P. C. W. A.

We are amending our route files to the extent that in order to eliminate this extra detail and confusion in following their routing instructions that we will again retain the right to route freight, inasmuch as shipments are forwarded on a freight allowed basis. As a matter of courtesy we are sincerely anxious to please our customers in every possible way, including favoring their choice of carrier. However, we cannot do this to the extent of assuming extra expense with the considerable detail work that is sure to result.

We trust therefore that you will advise your members that unless their purchase orders are correctly routed that it will result in the necessity of having to disregard their instructions in the future.

Yours very truly,

Traffic Manager,
Walker Manufacturing Company.

RMLange
ch

1104 PACIFIC COAST WHOLESALERS' ASSOCIATION
1618 Smith Tower
Seattle 4, Washington
Main 7566

April 11, 1946

Tariff references
Walker Mfg. Company
Racine, Wisconsin

Gentlemen:

You are making frequent shipments of jacks, mounted and unmounted, consigned to us at Chicago and submarked for our members Colyear Motor Sales and Piston Service at various destinations on the Pacific Coast.

We note you are using Commercial Truckers and Service Transport Company for the movement from Racine to Chicago.

The rates of these carriers were advanced 20¢ per 100 pounds effective February 28th, this year. The Keeshin Motor Express offer special assembling rates of 34½¢ per 100 pounds from Racine to Chicago on jacks, mounted or unmounted, and we will appreciate your routing these shipments to Chicago via Keeshin in order to provide the lowest transportation cost available. Will you please advise if this can be arranged.

Yours very truly,

PACIFIC COAST WHOLESALERS' ASSOCIATION

W. A. NOURSE

W. A. Nourse—*District Manager*

WAN:cp
cc PCWA—Los Angeles

File

1105 May 7, 1946

Pacific Coast Wholesalers' Association
1618 Smith Tower
Seattle 4, Washington

Attn: Mr. W. A. Nourse, District Manager

Dear Sir:

In reply to your letter of April 25 with regards to our using Keeshin Motor Express on the future shipments consigned c/o Pacific Coast Wholesalers' Association at Chicago because of the lower assembly rates via this carrier.

From the tariff reference mentioned in your letter we have checked and find that other carriers in Central States Motor Freight territory have requested permission of the Interstate Commerce Commission to publish these rates. This being denied we have also been advised that the rates published in Keeshin Motor Express 200 AMF ICC 2 issued July 2, 1945 are also to be cancelled which will again place all truck carriers on a par with regards to these rates.

Also because our shipping facilities do not allow us to use unlimited choice of carriers to your assembly point we are being penalized with regards to cost although your members are getting a rate that is well below that allowed on our invoice. In other words you are asking that we increase our shipping costs to reduce your carrying costs. This cannot be done at this time because the lowest tariff rate that we allow on the invoice in every case that we know of has more than covered the shipping costs of the consignee. Therefore, we suggest that this matter be dropped for the present or until the tariff mentioned is canceled.

Yours very truly,

Traffic Manager
Walker Manufacturing Company

RMLange
ch

✓ Exhibit No. 38

ORIGINAL FREIGHT BILL

PACIFIC COAST WHOLESALERS' ASSOCIATION

1

STATION: LOS ANGELES

DATE: 1-21-46

REF. NO.: CLA 1710-5

SHIPPER: AUTO MAINT MACH CO
NO CHGO ILL

CONSIGNEE: COLYEAR MOTOR SALES CO
LOS ANGELES CALIF

DATE OF SHIPMENT: 1-9-46

NUMBER OF PACKAGES	DESCRIPTION AND MARKS	WEIGHT	RATE	COLLECT	PREPAID
	5 RR 300 1 VCS Surfacing Hone 10 AO 1 ✓ 5 SL400 Grinders				
3	CTNS ELEC TOOLS NBN KD 163	143	240	3 43	
	1 #1 Small Bore Hone		3%	10	
				3 53	

PRICES CHECKED BY
EXT
24427/L 1181/1
JAN 28 1946
CLERK
C.A. FOR PAYMENT

THIS FREIGHT BILL HAS BEEN PAID TO THE ORIGINAL CARRIER. IT IS NOW DUE.
THE PACIFIC TRANSPORTATION COMPANY,
825 EAST 62nd ST., LOS ANGELES, CALIF

108

757

1106

Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922, as amended August 1, 1930

UNIFORM STRAIGHT BILL OF LADING

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein and is intended solely for filing or record.

Shipper's No. 4286.

Wibber Company Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt [illegible] TOMOTIVE MAINTENANCE MACHINERY CO

At No Chicago Ill 1-9-19 46 From 2100 COMMONWEALTH AVE.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which [illegible] company (the word company being understood throughout this contract as meaning any person or corporation in possession of the [illegible] to carry to its usual place [illegible] delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to Colyear Motor Sales 1323 S. Flower St

Destination Los Angeles State of Calif County of

Route P. C. W. A.

Delivering Carrier Car Initial Car No.

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	* WEIGHT (Subject to Correction)	CLASS or RATE	CHECK COLUMN
3	Ctns Electric Tools Norton	143		
	24427-1			
	1181-1			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall [redacted] delivery of this shipment [redacted] out payment of freight and other lawful charges.

Signature of Consignor.

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

[illegible] by the shipper to be not exceeding $ per

TOMOTIVE MAINTENANCE MACHINERY CO

2100 COMMONWEALTH AVE. Shipper, Per C AGENT Wibber PER H Meyer 3

NORTH CHICAGO, ILL.

Permanent postoffice address of shipper

THE FIBRE BOXES used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

WORLD WIDE Form 41

759

1107

EXHIBIT 40

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930, and June 15, 1941.)

UNIFORM STRAIGHT BILL OF LADING

ORIGINAL — NOT NEGOTIABLE

Shipper's No.

COMPANY

Agent's No. P453

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

AT CHICAGO, ILL. 9-12 194 From JOHN A. ROEBLING'S SONS CO.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination. If on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Pacific Coast Wholesale Forge & Tool Co. (Mail or street address of consignee—For purposes of notification only.)

Destination Salt Lake City State of Utah County of

Route Pacific Coast Wholesale Co.

Delivering Carrier 38861 Car Initial Car No.

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Sub. to Cor.)	Class or Rate	Ck. Col.
	~~Coils Iron or~~ Steel Wire Rope			
1	Reels " " "	2437		
	Fittings 1			
	Coils Steel Wire			
	Boxes " "			
	Coils Copper Wire			
	Reels " "			
	Coils Ins. Copper Wire			
	Reels " " "			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid." Prepaid

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

Charges advanced: $

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

JOHN A. ROEBLING'S SONS CO., Shipper, Per Agent Per 8285

Permanent post-office address of shipper: 431 WEST PERSHING ROAD, CHICAGO, ILL.

1108

761

PURCHASE ORDER

OK

The Galigher Company

MINE, MILL AND INDUSTRIAL DISTRIBUTORS

48 South 2nd East Street

Salt Lake City 1, Utah

FILE
E. H. R.

John A. Roeblings' Sons Company
600 West Jackson Blvd.
Chicago, Ill.

Prepaid

This Order is placed under following conditions which must be strictly observed:

1. That you will send original Bill of Lading or Express receipt with invoices in Duplicate giving weight and rate.
2. That Freight if delivered here and freight allowance earned will be deducted from invoice.
3. That all goods bought delivered, date from arrival.
4. All materials must be forwarded by the route designated and shipper will be held strictly accountable for any deviation therefrom.
5. When materials covered by this Order shall aggregate a car load shipment or more, the shipper must forward in carloads, unless duly authorized by us in writing to ship less than carloads.
6. Shipments will not be considered as completed until Bill of Lading or Express receipt is received.
7. No charge will be allowed for packing, boxing or cartage unless agreed upon at the time of purchase; damage to any material not properly packed to insure proper protection in transit will be charged to the shipper.
8. Cash discount if allowed and gross shipping weight must be shown on face of invoice.
9. Shipments must be made on or before the dates specified. We reserve the right to cancel deliveries of any of the material listed on this order that is not shipped by the time specified.
10. Your acceptance of this order acknowledges your acceptance of the foregoing stipulations and binds you to comply therewith.

DATE 5-15-46

ROUTE VIA Your Delivery

Jos in Dup
Taken stock arrives

SHIP TO

SHIP ACCORDING TO STANDING INSTRUCTIONS

MARK and SHIP TO { PACIFIC COAST WHOLESALERS' ASSOCIATION
900 SOUTH WELLS ST., CHICAGO, ILL.

SUB-MARK { FOR: THE GALIGHER CO.
SALT LAKE CITY, UTAH

IMPORTANT

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"CONSIGNMENT"

R Pref

1-Reel 3000-Feet 5/8" - 6 x 19 Blue Center Steel Wire Rope - Regular Lay

~~Preformed~~ - I.W.R.C.

.255 per ft
net

EXHIBIT 49

Ex Parte
Witness Anderson
422

PACIFIC COAST WHOLESALERS' ASSOCIATION

Status of

U.S. MARITIME COMMISSION ACCOUNT ON FEB. 6, 1947

Due USMC 1944 Savings - Nov. and Dec.	$ 4,634.13	
Due USMC 1945 Savings - Jan. thru Dec.	9,798.96	
Due USMC 1944 Rev.Fund- Jan. thru Dec.	6,674.09	
Due USMC 1945 Rev.Fund- Jan. thru Dec.	1,466.21	$ 22,573.39
Undercharge Reserve-- 1942	16.63	
" " -- 1943	640.78	
" " -- 1944	403.01	
" " -- 1945	568.16	1,628.58
		$ 24,201.97
USMC Tax Liability - Estimated	15,509.62	
Absorptions on USMC Claims - to charge U/C Res. or otherwise - Estimated	4,000.00	
P.C.W.A. Accounts Receivable - Unpaid freight charges	4,532.69	
		$ 24,042.31

Due USMC 1945 Rev.Fund- Jan. thru Dec.	1,466.21	$ 22,573.39
Undercharge Reserve-- 1942	16.63	
" " -- 1943	640.78	
" " -- 1944	403.01	
" " -- 1945	568.16	1,628.58
		$ 24,201.97
USMC Tax Liability - Estimated	15,509.62	
Absorptions on USMC Claims - to charge U/C Res. or otherwise - Estimated	4,000.00	
P.C.W.A. Accounts Receivable - Unpaid freight charges	4,532.69	
		$ 24,042.31

1944 Savings Due:	Nov.	$ 2,601.74
	Dec.	2,032.39
1945 Savings Due:	Jan.	1,896.68
	Feb.	1,965.05
	Mar.	1,872.34
	Apr.	1,039.25
	May	1,031.75
	June	715.81
	July	460.89
	Aug.	607.22
	Sept.	205.44
	Oct.	2.79
	Nov.	1.28
	Dec.	.46

Interstate Commerce Commission
Docket No. Ex parte 160 Exhibit No. 49
Witness Anderson
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1111 In the Supreme Court of the United States

No. 113, October Term, 1949

Stipulation Re Exhibits—Filed Sept. 17, 1949.

It is hereby stipulated, by and between the parties herein, that on hearing of the appeal before this court, in the above-entitled case, either side or any party by counsel, or the court or any member thereof may refer to such of the original exhibits in the case as have not been printed, with the same force and effect as if the same had been printed in full in the transcript of record.

PHILIP B. PERLMAN
Solicitor General
For the United States

DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel for Inter-State Commerce Commission

HARRY C. AMES,
Harry C. Ames
Attorney for Freight Forwarders Institute

HUGH GORDON
Hugh Gordon
Attorney for Pacific Coast Wholesalers' Association, Appellee

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1113 In the Supreme Court of the United States

No. 113

Statement of Points to be Relied Upon and Designation of Parts of Record Necessary for Consideration Thereof—Filed June 17, 1949

1. Now come appellants United States of America and Interstate Commerce Commission, and for their statement of points upon which they intend to rely in their appeal to this Court, adopt the points contained in their assignment of errors heretofore filed herein.

2. The parts of the record which appellants think necessary for the consideration of the foregoing points are:

1. The record in this cause filed in this Court pursuant to appellants' praecipe as supplemented by appellees' counter praecipe, dated April 20, 1949, to the Clerk of the United States District Court for the Southern District of California, but including only the following parts of item No. 18 of appellant's Praecipe, the Record in Interstate Commerce Commission's Docket *Ex Parte* 160, to-wit:

(a) Pages 1 to 574, inc., and 650 to 1040, inc., of Transcript of Testimony.

(b) *In Commission's Exhibit No. 23:*

(1) Original Freight Bill, Pacific Coast Wholesalers' Association, dated 6-27-46, covering shipment
1114 from Yale & Towne Mfg. Co., Phila., Pa., consigned to Ducommun Metals Sup. Co., Los Angeles, Calif.

(2) Memorandum Bill of Lading, dated June 6, 1946, covering same shipment, consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill., Route B & O: Submarked Ducommun Metals and Supply Company.

(c) *In Commission's Exhibit No. 25:*

(1) Duplicate Freight Bill, Pacific Coast Wholesalers' Assn., dated 6-8-45, covering shipment made by R. M. Hollingshead Corp'n., Camden, N. J., to Strevell Paterson Hdwe Co., Salt Lake City, Utah.

(2) Original Uniform Straight Bill of Lading, dated May 16, 1945, covering same shipment from R. M. Hollingshead Corp'n., Camden, N. J. to Pacific Coast Wholesalers' Assn., 900 South Wells St., Chicago, Ill., Route, Clipper C. L. Co: "(Submarked for) Strevell-Paterson Hdwe Co., Salt Lake City, Utah."

(d) *In Commission's Exhibit No. 26:*

(1) Original Freight Bill, dated 8-5-46, of Pacific Coast Wholesalers' Assn., covering shipment made by Keystone Lubricating Co., Phila., Pa., to the Galligher Co., Salt Lake City, Utah.

(2) Memorandum Bill of Lading, covering same shipment consigned by Keystone Lubricating Co., to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill., Route Lifschultz Fast Frt.

(e) *In Commission's Exhibit No. 28:*

(1) Original Freight Bill, Pacific Coast Wholesalers' Assn., dated 10-23-46, shipment by Superior Tube Co., Collegeville, Penn., consigned to Ducommun Metal & Sup. Co., Los Angeles, Calif.

1115 (2) Memorandum Bill of Lading of Reading Co., dated Sept. 24, 1946, covering same shipment from Superior Tube Co., consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill. "For Reshipment to Ducommun Metals and Supply Co., Los Angeles, Calif."

(f) *In Commission's Exhibit No. 29:*

(1) Original Freight Bill, dated 8-30-46, covering shipment from Tyson Bearing Corp., Massilon, Ohio, to Chanslor & Lyon Co., San Francisco, Calif. "Prepaid."

(2) Memorandum Bill of Lading dated Aug. 6, 1946, covering same shipment, consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill., Route P. R. R., c/o P. C. W. A. "Prepaid."

(g) *In Commission's Exhibit No. 30:*

(1) Original Freight Bill, dated 8-1-46, of Pacific Coast Wholesalers' Assn., covering shipment made by Weatherhead Co., Cleveland, Ohio, to Colyear Motor Sales Co., Seattle, Wn.:

(2) Memorandum Bill of Lading, covering same shipment consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, by The Weatherhead Co., Route Liberty Highway.

(h) *In Commission's Exhibit No. 31:*

(1) Duplicate Freight Bill, Pacific Coast Wholesalers' Assn., dated 1-28-46, shipment from Thompson Products, Inc., Cleveland, Ohio, to Motor Mercantile Co., Salt Lake City, Utah.

(2) Uniform Straight Bill of Lading, dated 1-10-1946, covering same shipment, Thompson Products, Inc., consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill. "For Motor Mercantile Co., Los Angeles, Calif., For Strevell Paterson."

1116 (i) *In Commission's Exhibit No. 32:*

(1) Original Freight Bill, dated 9-12-46, Pacific Coast Wholesalers' Assn., covering shipment The Almetal Universal Joint Co., Cleveland, Ohio, consigned to The Lambert Co., Ltd., Los Angeles, Calif.

(2) Memorandum Bill of Lading, dated Aug. 28, 1946, covering same shipment, The Almetal Universal Joint Co., consigned to Pacific Coast Wholesalers' Assn., 900 S. Wells St., Chicago, Ill. "For The Lambert Co., Ltd., Los Angeles, Calif."

(3) Debit Memo., dated Sept. 24, 1946, Lambert Co., Ltd., for Freight Allowance claimed from Almetal Universal Joint Co., on same shipment.

(4) Debit Memo., dated 2-25-46, for allowances on Freight Bills claimed by Lambert Co., Ltd., from Almetal Universal Joint Co.

(j) *All of Commission's Exhibit No. 33.*

(k) *In Commission's Exhibit No. 34:*

(1) Original Freight Bill of Pacific Coast Wholesalers' Assn., dated 10-8-45, covering shipment made by The Imperial Brass Mfg. Co., Chicago, Ill., to Motor Hdwe. & Equip. Co., San Diego, Calif.

(2) Memorandum Bill of Lading, dated 9-28-45, covering same shipment.

(l) *In Commission's Exhibit No. 35:*

(1) Freight Waybill, dated 10-18-46, covering shipment of Walker Manufacturing Co., Racine, Wisc., to Salt Lake Hardware Co., Evanston, Wyo.

(2) Invoice of Walker Mfg. Co., to The Salt Lake Hardware Co., covering above shipment, "Less Frt. Allowed."

1117 (3) Shipping Order issued by Walker Mfg. Co., covering Jacks sold to The Salt Lake Hdwe. Co.

(m) *In Commission's Exhibit No. 36:*

(1) Letter of March 27, 1946, addressed to Ajax Auto Parts Co., Racine, Wisc., from Fey & Krause, Inc., Los Angeles, Calif.

(2) Letter of April 8, 1946, to Fey & Krause, Inc., Los Angeles, Calif., from Ajax Auto Parts Co.

(3) Letter of April 20, 1946, to Walker Manufacturing Co., Racine, Wisc., from The Lang Co., Salt Lake City, Utah.

(4) Letter dated May 13, 1946, to The Lang Co., Salt Lake City, Utah, from Walker Manufacturing Co.

(5) Letter dated Feb. 8, 1946, from Pacific Coast Wholesalers' Assn., Los Angeles, Calif., to Walker Manufacturing Co., Racine, Wisc.

(6) Letter dated Feb. 21, 1946, from Walker Manufacturing Co., to Pacific Coast Wholesalers' Assn., Los Angeles, Calif.

(7) Letter dated April 11, 1946, from Pacific Coast Wholesalers' Assn., Seattle, Wash., to Walker Manufacturing Co., Racine, Wisc.

(8) Letter dated May 7, 1946, from Walker Manufacturing Co., to Pacific Coast Wholesalers' Assn., Seattle, Wash.

(n) *In Commission's Exhibit No. 38:*

(1) Original Freight Bill, Pacific Coast Wholesalers' Assn., dated 1-21-46, covering shipment from Auto Maint. Mach., Co., No. Chicago, Ill., to Colyear Motor Sales Co., Los Angeles, Calif.

1113 (2) Memorandum Bill of Lading, dated 1-11-46, covering above shipment from Automotive Maintenance Machinery Co., No. Chicago, Ill., to Colyear Motor Sales Co., Los Angeles, Calif. "Route P. C. W. A."

(o) *In Commission's Exhibit No. 40:*

(1) Uniform Straight Bill of Lading, dated 9-12-46, covering shipment from John A. Roebling's Sons Co., Chicago, Ill., consigned to Pacific Coast Wholesalers' Assn., for Galigher Co., Salt Lake City, Utah, Route Pacific Coast Wholesalers' Assn.

(2) Purchase Order, The Galigher Company, Salt Lake City, Utah, for material shipped on above Bill of Lading by John A. Roebling's Sons. Order No. 8453.

(p) *In Commission's Exhibit No. 49:*

Pacific Coast Wholesalers' Association—Status of U. S. Maritime Commission Account on Feb. 6, 1947.

Appellants designate the foregoing specified parts of the record for printing by the Clerk of this Court.

PHILIP B. PERLMAN
Solicitor General
DANIEL W. KNOWLTON
Chief Counsel
Interstate Commerce Commission

1120 In the Supreme Court of the United States

No. 114

Statement of Points to be Relied Upon and Designation of Parts of Record Necessary for Consideration Thereof —Filed October 27, 1949

1. Now comes appellant, Freight Forwarders Institute, and for its statement of points upon which it intends to rely in its appeal to this Court, adopts the points contained in its assignment of errors heretofore filed herein.

"CONSIGNMENT"

1-Reel 3000-Feet 5/8" - 6 x 19 Blue Center Steel ~~Fire Hose~~ - Regular Lay

~~Preformed~~ - I.W.R.C.

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Net

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Your acceptance of this order shall constitute your agreement that the prices to be charged us are not in excess of the legal maximums as established by the Office of Price Administration.

Mark All Packages with
Order No. _____
Reqn. No. _____
Our Order No. 8453 **Must Appear On All Invoices**

Special Notice

To Insure prompt Payment of Invoices, all instructions must be carried out to the Letter.

THE GALIGHER COMPANY

Per _____

2. The parts of record which this appellant thinks necessary for the consideration of the foregoing points are as set forth in the "Statement of Points, etc." heretofore filed by the United States and the Interstate Commerce Commission in No. 113.

HARRY C. AMES
Harry C. Ames
Attorney for Appellant

This is to certify that copies of the above statement have been served, first class mail, upon the attorneys of record for the United States, the Interstate Commerce Commission, and the appellee.

HARRY C. AMES
Attorney

1124 Supreme Court of the United States

Nos. 113 & 114, October Term, 1949

Order Noting Probable Jurisdiction—October 10, 1949

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted and the cases are transferred to the summary docket.

LIBRARY
SUPREME COURT, U.S.

No. 113

Office - Supreme Court, U. S.
FILED
JUN 11 1949
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1949

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, A CORPORATION, ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT,

and

INTERSTATE COMMERCE COMMISSION AND FREIGHT FORWARDERS INSTITUTE, INTERVENORS

STATEMENT AS TO JURISDICTION

Filed Apr. 12, 1949

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants, United States and Interstate Commerce Commission, submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment and decree of the District Court entered in this cause on February 18, 1949. A petition for appeal was filed on April 12, 1949, and is presented to the District Court herewith.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the decision in this cause is conferred by the Judicial Code, as revised by the act approved June 25, 1948, effective September 1, 1948, Title 28, U.S. Code, Sections 1253 and 2101 (b), consolidating and continuing the substance of prior provisions of law relating to direct appeals from decisions of three-judge courts in suits to set aside orders of the Interstate Commerce Commission. The following decisions, appeals in which were taken pursuant to such prior provisions thus codified, sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in these cases. *United States* v. *Capital Transit Company,* 325 U.S. 357; *United States* v. *Detroit & Cleveland Navigation Company,* 326 U.S. 236; *United States* v. *Pennsylvania Railroad Company,* 323 U.S. 612; *United States* v. *Pierce Auto Freight Lines,* 327 U.S. 515.

STATUTE INVOLVED

Section 402(c) of Part IV of the Interstate Commerce Act, 49 U.S.C. 1002(c), regulating freight forwarders, as enacted by the Act of May 16, 1942, provides in part:

> The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a non-profit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, * * *

THE ISSUES AND THE RULING BELOW

The question in this appeal is whether the Pacific Coast Wholesalers' Association is entitled to the benefit of the exemption provision of Section 402(c)(1) with respect to its operations in connection with shipments to its members and their customers from non-member consignors when the goods shipped were sold by such non-member consignors to members on a "delivered price" basis, under which it is the contractual responsibility of the non-member seller to bear transportation charges. The Interstate Commerce Commission in an investigation instituted under Section 403(f) of the Act (49 U.S.C. 1003(f)) found that the Association was not entitled to the benefit of the exemption provision of Section 402(c) with respect to such traffic,[1] but that its operations were those of a freight forwarder as defined in Section 402(a)(5) of the Act (49 U.S.C. 1002(a)(5)), holding itself out to the public to provide transportation for hire, and were therefore unlawful, in the absence of a permit as required by Section 410(a) of the Act (49 U.S.C. 1010(a)). The District Court held that the Commission's conclusions were not warranted by the facts found; that the facts found by the Commission admit of but one conclusion, namely that the Association at all times acts solely as agent of the member-purchasers, and hence derives no profit from its operations; that the Association does not hold itself out to the general public to provide transportation of property for

[1] With respect to traffic where members of the Association had purchased goods on an f.o.b. basis and were responsible for bearing the transportation charges, the Commission found that the Association's operations were within the scope of the exemption provision of Section 402(c)(1).

compensation; and that the conclusions and requirements of the Commission were without rational basis and should be set aside.

The facts regarding the transactions between the Association and its members, on the one hand, and non-members of the Association, on the other hand, are not in dispute. The Association collects from non-member consignors who have sold goods to members of the Association on a "delivered price" or "freight allowed" basis an amount equal to what the seller would have had to pay for transportation charges if the shipment had moved at the less-than-carload forwarder rate from origin to final destination. The amount so collected includes an item of 3%, equivalent to the transportation tax on the less-than-carload rate which the Association does not in fact pay, which the consignor seller would have incurred if the shipment had moved using the facilities of commercial forwarders.

From the amounts thus collected from non-member consignors, "refunds" are made to the members involved in the shipments. With regard to these so-called "savings" the Commission found:

> The so-called "savings" are the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival

notices, and 1.125 cents for insurance, on the other hand.

These differences or "savings" are paid to the member consignees, regardless of the fact that the charges were collected from the consignors.

Upon these facts the Commission concluded that the "refunds" or "savings" distributed to members of the Association out of the amounts collected from non-member consignors constituted profit. The Commission likewise held that since the consignor seller was responsible for bearing the transportation charges on goods sold on a delivered-price or freight-allowed basis, the Association's service was being performed for the non-member consignor rather than for the member consignee. For these reasons, the Commission determined that the Association's operations did not constitute "distributing freight for themselves" or distribution "on a non-profit basis," as required by Section 402(c) in order to obtain the exemption claimed by the Association, but on the contrary amounted to service to the public for hire. The District Court held that the Commission's determination was erroneous as a matter of law.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The question involved in this appeal is novel, and of importance to the industry as well as to the Commission in the administration of the act. The District Court's decision is one of first impression, and it is desirable that the issue should be authoritatively determined, in order that groups of shippers such as the Association, engaged in cooperative distribution of freight, may know the extent to which they may lawfully engage in such activities, without

subjecting themselves to regulation by the Commission as freight forwarders. To regulated freight forwarders it is equally vital to know the extent to which unregulated freight forwarders may lawfully engage in competition with them for available traffic. It is of public importance to the Commission, in the administration of the act, that the scope of regulation be delineated with clarity.

The basic error in the District Court's decision is its misconception of the scope of the exemption provision in Section 402(c) of the Act. The object of that provision was merely to relieve from regulation co-operative associations handling freight "for themselves" with a view of reducing the transportation charges which their members would otherwise be obliged to pay. The exemption provision did not contemplate the use of the facilities of such an association for the purpose of furnishing service to non-members and making a profit by performing that service at less cost than the charge which the non-member would have been obliged to pay if the facilities of regulated commercial freight forwarders had been used, while collecting from such non-member the full amount which would have been paid if regulated forwarder service had been used.

It seems plain that in the instant case no transportation service is performed for the members themselves, but that the Association's service is made available to all such non-member sellers as members may have dealings with. It is equally clear that a profit is made as a result of the Association's operations, such profit being subsequently distributed to the member involved as a "refund" or "saving." The District Court's decision is therefore erroneous in holding that the Association's operations constituted "distributing freight

for themselves" and not for the public at large composed of the suppliers from whom the Association's members made purchases. The decision was likewise erroneous in holding that the Association's operations were conducted "on a non-profit basis."

Conclusive proof of the fact that the Association's operations were not conducted on a non-profit basis is furnished by the fact that the Association collects from the non-member consignor a fictitious item of 3% transportation tax which is never in fact paid to the Government but which amounts to an equalization charge in order to make the amount received by the Association from the non-member consignor equal to what such consignor would have had to pay if the services of a regulated freight forwarder had been used.

If shipments are made using the facilities of a regulated freight forwarder, the forwarder collects from the shipper a 3% transportation tax measured by the forwarder's less-than-carload rate. When the forwarder thus collects the tax, the underlying rail or motor carrier does not do so. When shipments are handled by the Association for non-member consignors however, the underlying rail or motor carrier treats the Association as shipper and collects a tax of 3% on the carload or truckload rate. Thus the Government is never paid, in the case of shipments handled by the Association, the 3% tax on the higher L.C.L. or L.T.L. rate; but the Association collects that amount in full from the consignor and thus profits to the extent of the difference between 3% of the L.C.L. or L.T.L. rate and 3% of the carload or truckload rate. This profit is subsequently distributed to the member involved as a "refund" or "saving." Obviously the Association is here furnishing no service to its members but is merely collecting a fictitious equalization

charge so that the amount received by it from the non-member consignor is exactly equivalent to what the consignor would have had to pay if he had used the services of a regulated freight forwarder. The District Court's decision was clearly erroneous when it failed to recognize that the Association's practice of collecting the fictitious item of 3% demonstrably proved that the Association's operations were not "on a non-profit basis," as required by Section 402(c) of the Act in order to obtain exemption from regulation.

It is thus evident that important issues involving the interpretation and application of the Interstate Commerce Act to freight forwarders are presented by this appeal, and that substantial questions are raised which call for the appropriate exercise of appellate jurisdiction.

Dated April 12, 1949.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a corporation, and ELMER J. JENSON, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, INTERVENORS

OPINION

Before Stephens, Circuit Judge, and Yankwich and Mathes, District Judges:

MATHES, District Judge:

Plaintiffs, a nonprofit California corporation, and individuals comprising its board of directors, seek by this action "to enjoin, set aside, suspend and annul a certain report, requirement and order of the Interstate Commerce Commission." Jurisdiction of this court is invoked under 28 U.S.C., Sec. 1336 (formerly Sec. 41(28).)

Hearing and determination of the cause by "a district court of three judges" is required by 28 U.S.C., Sec. 2325 (formerly Sec. 47), and this court was accordingly designated by the Chief Judge of the Circuit pursuant to 28 U.S.C., Sec. 2284.

The challenged action of the Commission followed "an inquiry and investigation . . . under Sec. 403(f) of the Interstate Commerce Act, instituted . . . for the purpose of determining whether the operations of the Pacific Coast Wholesalers' Association, a corporation, . . . or of its

directors, officers, or representatives are in violation of any provision of part IV of the act, or of any rule, regulation or requirement issued or established pursuant thereto . . ." (264 I.C.C. 134).

In the language of the Commission's report of November 26, 1945 (264 I.C.C. 134), "the association was formed March 27, 1935, by a small group of dealers in automotive parts at Los Angeles, California, as a voluntary unincorporated, nonprofit association, (and was later incorporated) for the purpose of promoting the interest of its members, and to provide a means of assembling, consolidating, forwarding and distributing freight for its members, on a nonprofit basis, and for the purpose of securing the benefits of carload, truckload, or other volume rates . . . No freight is handled for nonmembers . . . Believing that it was exempt under the provisions of Sec. 402(c) of part IV of the act, neither the association nor the corporation filed an application for a permit to operate as a forwarder."

The report of November 26, 1945, concluded: "It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates, and that the association is operated on a non-profit basis. These are operations of the character contemplated by the exemption referred to, and may be continued without obtaining authority therefor from this Commission." Thereupon the Commission entered an order: "That this proceeding be, and it is hereby, discontinued."

Thereafter, upon petition of Freight Forwarders Institute, as intervenor, the proceedings were reopened and further hearings held. On December 18, 1947, a "Report of the Commission on Further Hearing" was filed (269 I.C.C. 504), setting aside the report of November 26, 1945.

In the second report, the Commission found, inter alia:

"All of the shipments involved are consigned from eastern origins to the association at Chicago upon instructions of the members, and are there consolidated in carloads and forwarded to destinations or break-bulk points and distributed to members of the association or to their customers in the destination areas . . .

"The bills of lading show the association as consignee, and Chicago as destination, with notations thereon showing the ultimate consignee and destination. They also bear, in the space provided therefor, the notations 'prepay', 'prepay through,' 'collect to Chicago and prepay through', or words of similar purport. Most of the freight bills show the charges as having been prepaid. Some of the invoices show deductions for freight allowed; and in other instances where the charges were billed collect, debit memoranda were issued by the member consignees against the consignors for the amount of the charges, or credit memoranda were issued by the consignors in favor of the consignees.

"In most instances, although the bills of lading are endorsed prepaid, the charges were not actually prepaid to the originating carrier at the time of shipment. Under a credit arrangement between the consignor and the association, the goods were billed collect to Chicago, and upon arrival the association advanced the charges to the originating carrier for its haul to Chicago and issued the association's prepaid freight bill from the point of origin to the final destination, and collected the charges from the consignor. If the charges to Chicago actually were prepaid to the originating carrier, the amount paid is credited on the association's freight bill. In other words, the association advances the charges to the

consolidating point and collects from the consignor the forwarder's through less-than-carload rate from origin to destination, plus 3 percent of the total freight charge.

"At destination the freight is delivered to the member consignees or to their non-member customers without additional charge. Thereafter the member is credited with the difference between the amount paid by the consignor, and the costs borne by the association for transportation, administration, handling, distribution, taxes, etc. No refunds are made to the non-member consignors who paid the charges in the manner stated.

". . . The consolidation of such shipments, including those delivered to customers of the members, and the payment to the members of the 'savings' resulting therefrom, is common practice.

"By far the greater part of the traffic is billed to the members as sub-consignees. A relatively minor part is billed to customers of the members at the direction of the latter. All transactions relating to the purchase and sale of the customer goods are between the members and the consignors . . .

"The so-called 'savings' are the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 cents for insurance, on the other hand.

"These differences or 'savings' are paid to the member consignees, regardless of the fact that the charges were collected from the consignors. Occasionally losses are sustained by the consignees because of the inclusion in the consolidated carloads of goods not subject to carload rates, but generally the association attempts to handle only freight on which a saving may be effected . . .

"The evidence clearly shows, and it is admitted by the members of the association and by its general manager, that 'refunds' are made to the members of a portion of the freight charges paid by non-member consignors."

The Commission thereupon concluded:

"(1) That the association's service in connection with shipments from nonmember-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the association's members and is not performed on a non-profit basis within the meaning of Sec. 402(c)(1) of the act;

"(2) That the operations of the association as described . . . are those of a freight forwarder in interstate commerce within the meaning of Sec. 402(a)(5) of the act, and that continuance thereof without a permit is in violation of Sec. 410(a) of the act and therefore unlawful; [and]

"(3) That respondents [the individuals] to the extent that they are parties to such unlawful operations, are likewise in violation of Sec. 410(a) of the act."

The "requirements" of the Commission accompanying the report of December 18, 1947, read:

"Respondents will be expected (a) to discontinue on or before March 4, 1948, the operations herein found to be unlawful, and (b) to notify the Commission on or before March

> 19, 1948 in writing under oath that such operations have been discontinued."

The Commission has construed the somewhat equivocal verb phrase "will be expected" to connote a command. [cf. *Rochester Tel. Corp. v. United States,* 307 U. S. 125, 143-144 (1939).]

The petition for reconsideration having been denied, respondents commenced this action on August 30, 1948, to set aside the above quoted requirements. The "effective dates of the aforesaid requirements" have been postponed from time to time by order of the Commission, and now await final judgment herein. Both the Commission and Freight Forwarders Institute have intervened on the side of the defendants and have filed answers and briefs.

The Commission's action in question was taken under the authority of Sec. 403(f) of the Interstate Commerce Act, as amended, (49 U.S.C., Sec. 1003(f)):

> "The Commission may investigate, either upon complaint or upon its own initiative whether any freight forwarder has failed to comply with any provision of this chapter . . . and, after notice and hearing, take appropriate action to compel compliance therewith."

Jurisdiction to set aside a "requirement" of the Commission is conferred upon this court in Sec. 17(9) of the Act (49 U.S.C., Sec. 17(9)):

> "When an application for rehearing . . . or reconsideration of any . . . requirement . . . shall have been denied . . . by the Commission . . ., a suit to enforce, enjoin, suspend, or set aside such . . . requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise."

See: 28 U.S.C., Sec. 1336 (formerly Sec. 41(28);

cf. *Columbia Broadcasting System* v. *United States,* 316 U. S. 407, 417 (1942); *United States* v. *Los Angeles R. R.,* 273 U. S. 299, 309-312 (1927).)

However, as said in *Rochester Tel. Corp.* v. *United States, supra,* 307 U. S. 125, 139-140 (1939), "the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable."

The full record before the Commission has been brought here, and it appears beyond dispute that there is evidence of substance to support the Commission's findings of fact (*Louisiana etc. Ry. Co.* v. *United States,* 257 U. S. 114, 116 (1921); *I.C.C.* v. *Union Pacific,* 222 U. S. 541, 547-548 (1912)). "The findings in the report being thus accepted as true, there is left only the inquiry whether they give support to the conclusion . . . The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." (*Miss. Valley Barge Co.* v. *United States,* 292 U. S. 282, 286-287 (1934).)

The courts will not consider the wisdom of the "requirement" in question, or substitute their judgment for that of the Commission (*Assigned Car Cases,* 274 U. S. 564, 580 (1927); *New England Divisions Case,* 261 U. S. 184, 204 (1923); *I.C.C.* v. *Illinois Central R.R.,* 215 U. S. 452, 470 (1910)). So the precise question here is whether the facts found by the Commission show respondent Pacific Coast Wholesalers' Association to be a "freight forwarder" within the meaning of Sec. 402 of the Interstate Commerce Act (49 U.S.C., Sec. 1002). Section 402(a)(5) provides that:

> "The term 'freight forwarder' means any person which (otherwise than as a carrier

subject to chapter 1, 8, or 12 of this title) holds itself out to the general public to transport or provide transportation of property, . . . for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to chapter 1, 8 or 12 of this title."

Section 402(c) of the Act (49 U.S.C., Sec. 1002 (c)) declares that:

"The provisions of this chapter shall not be construed to apply . . . to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates . . ."

The December 18, 1947 report of the Commission states: "Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember-consignors, the association is operating for hire and therefore for profit." But earlier in the report the Commission found that: "All transactions relating to the purchase and sale of the customer goods are between the members and the consignors." And further that: "These differences or 'savings' are paid to the member consignees, regardless of the fact that the charges were collected from the consignors."

It is true of course, as the Commission points out, that "where goods are f.o.b. destination, it is

ordinarily the seller who bears the freight, who suffers from the excessive charges", and the purchaser who pays the freight does so "solely as agent of the seller" (*Louisville & Nashville R.R. Co.* v. *Sloss-Sheffield etc. Co.*, 269 U. S. 217, 235, 238 (1925)). But those are matters of contract between the seller-consignor and the purchaser-consignee.

Here the determinative inquiry is not as to agency as between consignor-seller and consignee-member (cf. *Adams* v. *Mills*, 286 U. S. 397, 406-407 (1932)), but as to the agency relationship between both or either of them and the association. And the facts found by the Commission admit of but one conclusion as to this: That the association at all times acts solely at the request, and under the direction, and for the account and benefit, of the member-purchaser. As between member and association, then, the former always acts as principal, the latter as agent.

The existence of this agency is implicit in the findings of the Commission. The report states that "All of the shipments involved are consigned . . . upon instructions of the members" of the association. Admittedly, the facilities of the association are not available to a nonmember shipper otherwise than through arrangements made by a member. And the necessary arrangements are that the member as principal instruct the association as agent to handle the shipment. Moreover, both the purpose and the result of the transaction is not to benefit the shipper, but to reduce transportation costs to the member through savings effected in cooperation with other members who likewise employ the association as transportation agent.

When this principal-agent relationship between member-purchaser and the association is borne in mind it is clear that there is no profit to the association from the activities described in the Commission's report (49 U.S.C., Sec. 1002(c)); and it is equally clear that the association, as agent for

the members, does not "hold itself out to the general public to . . . provide transportation of property . . . for compensation" (49 U.S.C., Sec. 1002(a)(5)).

The court is of opinion therefore that inasmuch as respondent association acts only as agent of its members "in consolidating or distributing freight . . . for the members . . . on a non-profit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates," respondents are not subject to regulation in such activities by the Commission pursuant to part IV of the Interstate Commerce Act. Which is to say that the conclusions reached by the Commission in the report of November 26, 1945 (264 I.C.C. 134) were correct.

Accordingly the court holds that the conclusions and requirements of the Commission, predicated upon the report of December 18, 1947 (269 I.C.C. 504), have no rational basis, and must be set aside.

Plaintiffs will submit findings of fact, conclusions of law and judgment setting aside the requirements of the Commission as prayed for, pursuant to local rule 7 within ten days.

January 24, 1949.

ALBERT LEE STEPHENS,
Circuit Judge.

LEON R. YANKWICH,
District Judge.

WM. C. MATHES,
District Judge.

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Hugh Gordon, Gordon, Knapp and Hennessy, 453 South Spring Street, Los Angeles 13, California, Michigan 1997, Attorneys for plaintiffs.

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, *Plaintiffs,*

v.

UNITED STATES OF AMERICA, *Defendant,*

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, Intervenors

Findings of Fact and Conclusions of Law

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James N. Carter, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America; Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Commission and H. L. Underwood, Attorney for the Interstate Commerce Commission

appearing by H. L. Underwood for the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleadings submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I.C.C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument and having heretofore filed herein its written opinion, and good cause appearing;

NOW, THEREFORE, said court makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. Plaintiff, Pacific Coast Wholesalers' Association, is a non-profit corporation organized pursuant to the provisions of Division First, Part IV, Title XII of the Civil Code of the State of California and has its principal place of business in Los Angeles, California. It has no capital stock, does not earn or declare dividends and membership therein, limited under the by-laws to fifty, is evidenced by non-transferable membership certificates.

2. Plaintiffs, Elmer J. Jensen, Percy T. Lyon and Ira C. Lambert, members of the Board of Directors, and G. A. Olson and Sol Smith, employees of said Association, are residents of the Southern District of California.

3. The members of the said Association are and at all times referred to herein have been engaged in business in the states of California, Oregon, Washington, Utah and Arizona, as wholesalers of auto-

motive parts, machinery, hardware and other articles of property, purchased by said members from manufacturers or other suppliers located at various points east of Chicago, Illinois, and who are not members of the said Association.

4. All transactions relating to the purchase and sale of the goods comprising the said shipments are between the members of the Association, as purchasers, and the non-member consignors, as sellers, whereby provision is made in some instances for payment by the sellers, as a credit on the purchase price of the goods, of all or some portion of the amount of freight charges which would accrue on each shipment if transported under the prevailing freight forwarder rates applicable to such shipment from origin to final destination.

5. Said Association was organized and is operated to provide a means of assembling, consolidating, forwarding, and distributing freight for its members on a non-profit basis for the purpose of securing for its members the benefits of car load, truck load and other volume rates and the freight so assembled, consolidated, forwarded and distributed by the Association is comprised exclusively of property purchased by its members as aforesaid from manufacturers and other suppliers east of Chicago, Illinois.

6. At destination the freight is delivered by the Association to the member consignees or their customers and thereafter the member is credited with the difference between the amount paid by the consignor for the account of the member and the costs borne by the Association for transportation, administration, handling, distribution, taxes, and other incidental costs. No refunds are made to the non-member consignors who paid freight charges or made freight allowances in the manner aforesaid.

7. The facilities of the Association are not available to a non-member shipper otherwise than

through arrangements made by a member wherein the member instructs the Association to handle the shipment comprising goods purchased by and consigned to such member or to a customer of such member.

8. By order dated May 6, 1944, the Interstate Commerce Commission instituted a proceeding of inquiry and investigation under Section 403 (f) of the Interstate Commerce Act for the purpose of determining whether the operations of Pacific Coast Wholesalers' Association, a corporation, or its directors, officers, or representatives are in violation of any provision of Part IV of said Act or of any rule, regulation, or requirement issued or established pursuant thereto. Said proceeding is docketed and designated in the files of the Interstate Commerce Commission as "Ex Parte 160—Pacific Coast Wholesalers' Association—Investigation of Status."

9. Hearings were held in said proceeding, Ex Parte 160, evidence both oral and documentary was received, briefs filed and oral argument had, following which the Interstate Commerce Commission, on December 18, 1947, rendered its Report wherein the Commission stated its Findings of Fact the substance and effect of which are contained in the Findings of Fact of the Court herein, and concluded therefrom as follows:

> "(1) That the Association's service in connection with shipments from non-member-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the Association's members and is not performed on a non-profit basis within the meaning of Sec. 402 (c)(1) of the Act;
>
> (2) That the operations of the Association as described . . . are those of a freight forwarder in interstate commerce within the meaning of Sec. 402 (a)(5) of the Act, and

that continuance thereof without a permit is in violation of Sec. 410 (a) of the Act and therefore unlawful; (and)

(3) That respondents (the individuals) to the intent that they are parties to such unlawful operations, are likewise in violation of Sec. 410 (a) of the Act."

10. By its said Report of December 18, 1947, the Interstate Commerce Commission further set forth its requirements that on or before certain specified dates respondents discontinue the operations found by said Report to be unlawful and to notify the Commission in writing, under oath, that such operations had been discontinued.

11. Thereafter a Petition for Reconsideration was duly filed by respondents in said proceeding before the Interstate Commerce Commission which petition was denied by the Commission prior to the commencement of this action wherein the said respondents, as plaintiffs herein, invoke the jurisdiction of this court under 28 U.S.C. Sec. 1336 and 49 U.S.C. Sec. 17 (9) to enjoin, set aside, suspend, and annul the said Report and Requirements of the Interstate Commerce Commission rendered December 18, 1947, in said proceeding, Ex Parte 160.

Conclusions of Law

1. The Association in assembling, consolidating, forwarding, and distributing freight for its members including shipments from non member consignors to member consignees and their customers of goods sold on a f.o.b. destination or delivered price basis acts exclusively as the agent of the member consignees and not as the agent of the non member consignors.

2. There is no profit to the Association resulting from its activities as the transportation agent of its members in assembling, consolidating, forwarding, and distributing freight for its said members.

3. The Association in its said activities as transportation agent of its members does not hold itself out to the general public to provide transportation of property for compensation.

4. The Association's services in connection with shipments from non member-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered price basis is a service for the Association's members and is performed on a non profit basis within the meaning of Section 402 (c) (1) of the Interstate Commerce Act.

5. The operations of the Association, its directors, officers and employees in assembling, consolidating, forwarding, and distributing freight for the members of the Association are not those of a freight forwarder in interstate commerce within the meaning of Section 402 (a) (5) of the Interstate Commerce Act and continuance thereof without a permit issued by said Commission is not in violation of Section 410 (a) of the Interstate Commerce Act or otherwise unlawful.

The conclusions and requirements of the Interstate Commerce Commission predicated upon its Report of December 18, 1947, in its proceeding Ex Parte 160 have no rational basis and should be set aside.

Dated: February 18, 1949.

ALBERT LEE STEPHENS,
Circuit Judge;
LEON R. YANKWICH,
District Judge;
WILLIAM C. MATHES,
District Judge.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Georgia Walker being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party

to the within above entitled action; that affiant's business address is 453 South Spring Street, Rm. 612, Los Angeles 13, California, that on the 3rd day of February, 1949, affiant served the within Findings of Fact and Conclusions of Law on the intervenors in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said intervenors at the office address of said attorneys as follows:

Counsel for Intervenor, Interstate Commerce Commission, Daniel W. Knowlton, Chief Counsel; H. L. Underwood, Attorney, 3329 Interstate Commerce Building, Washington 25, D. C.

Counsel for Intervenor, Freight Forwarders Institute, Messrs. Harry C. Ames and Giles Morrow, Transportation Building, Washington 6, D. C.

and by then sealing said envelope and depositing the same by air mail, special delivery, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

(s.) GEORGIA WALKER.

Subscribed and sworn to before me this 3rd day of February, 1949. (s.) Agnes T. Runyard, Notary Public in and for said County and State. (Seal.)

APPENDIX C

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

Hugh Gordon, Gordon, Knapp and Hennessy, 453 South Spring Street, Los Angeles 13, California, Michigan 1997, Attorneys for plaintiffs.

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, INTERVENORS

DECREE ANNULLING, SETTING ASIDE AND ENJOINING ENFORCEMENT OF REQUIREMENT BY INTERSTATE COMMERCE COMMISSION

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James M. Carter, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America; Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Commission and H. L. Underwood, Attorney for the Interstate Commerce Commission appearing by H. L. Underwood for

the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleadings submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I.C.C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument, and having heretofore filed herein its written opinion and Findings of Fact and Conclusions of Law; and good cause appearing;

NOW THEREFORE, it is hereby decreed as follows:

That the requirements of the Interstate Commerce Commission as set forth in the Report of the Commission on Further Hearing, filed December 18, 1947, in its proceeding, Ex Parte 160, that the respondents therein discontinue the operations found by said Report to be unlawful, and notify the Commission in writing, under oath, that such operations have been discontinued be and the same are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined.

Dated: February 18, 1949.

ALBERT LEE STEPHENS,
Circuit Judge;
LEON R. YANKWICH,
District Judge;
WILLIAM C. MATHES,
District Judge.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Georgia Walker being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant

is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 453 South Spring Street, Rm. 612, Los Angeles 13, California, that on the 3rd day of February, 1949, affiant served the within Decree Annulling, Setting Aside and Enjoining Enforcement of Requirement By Interstate Commerce Commission on the intervenors in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said intervenors at the office address of said attorneys as follows:

Counsel for Intervenor, Interstate Commerce Commission, Daniel W. Knowlton, Chief Counsel, H. L. Underwood, Attorney, 3329 Interstate Commerce Building, Washington 25, D. C.

Counsel for Intervenor, Freight Forwarders Institute, Messrs. Harry C. Ames and Giles Morrow, Transportation Building, Washington 6. D. C.

and by then sealing said envelope and depositing the same by air mail, special delivery, with postage thereon fully prepaid in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

(s.) GEORGIA WALKER.

Subscribed and sworn to before me this 3rd day of February, 1949. (s.) Agnes T. Runyard, Notary Public in and for said County and State. (Seal.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1949

No. [redacted] 114

FREIGHT FORWARDERS INSTITUTE,
Appellant,

vs.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

FRANK D. CATLIN,
HARRY C. AMES,
Counsel for Appellant.

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IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil Action No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, A CORPORATION AND ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON, AND SOL SMITH, *Plaintiffs.*

v.

UNITED STATES OF AMERICA, *Defendant,*

AND

INTERSTATE COMMERCE COMMISSION AND FREIGHT FORWARDERS INSTITUTE, *Interveners.*

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, intervener-appellant, Freight Forwarders Institute, submits herewith its statement disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment and decree of the district court in this cause made on February 18, 1949. Petition for appeal together with an assignment of errors was filed on April 12, 1949.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the decision in this cause is conferred by the Judicial Code, as revised by the act approved June 25, 1948, effective September 1, 1948, Title 28, U. S. Code, Sections 1253 and 2101(b), consolidating and continuing the substance of prior provisions of law relating to direct appeals from decisions of three-judge courts in suits to set aside orders of the Interstate Commerce Commission. The following decisions, appeals in which were taken pursuant to such prior provisions thus codified, sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in these cases. *United States* v. *Capital Transit Company*, 325 U. S. 357; *United States* v. *Detroit & Cleveland Navigation Company*, 327 U. S. 236; *United States* v. *Pennsylvania Railroad Company*, 326 U. S. 612; *United States* v. *Pierce Auto Freight Lines*, 327 U. S. 515.

Statutes Involved

Interpretation of several sections of Part IV of the Interstate Commerce Act are involved in this appeal, to wit, 402(a)(5), 402(c)(1), 410(a); 49 U. S. C. 1002(2)(5), 1002(c)(1), 1010(a), respectively.

Nature of the Case and Rulings of the Court Below

This is an appeal from the final decree of the District Court of the United States for the Southern District of California, Central Division, entered February 18, 1949, in which it set aside the findings and order of the Interstate Commerce Commission in a proceeding styled *Pacific Coast Wholesalers' Association—Investigation of Status*, 269 I. C. C. 504. In such decision the Commission had ordered the respondent association to cease and desist from handling

shipments on which the consignors (nonmembers of the association) had either (a) prepaid the freight charges at point of origin, or (b) allowed the freight charges, paid at destination, to be deducted, as such, from the face of the invoice of sale.

The facts are these: Taking advantage of the provision in section 403(c)(1) of Part IV of the Interstate Commerce Act, which exempts from regulation "the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates," the shippers of some seven[1] major classifications of freight banded together into an association for the purpose of handling the less-than-carload shipments of the members. A manager—G. A. Olson, a co-plaintiff herein—handled the physical details connected with the service and was compensated by a gross allowance in cents per 100 pounds out of which he paid office expenses, etc.

The rates charged by the association to its constitutent membership are the published rates of the regulated freight forwarders, plus 3% to effectuate a complete parity with the regulated forwarders rate, to which latter the 3% is added as a transportation tax. Out of this gross amount the manager—Olson—deducts his commission, an agreed amount called a revolving charge to take care of working capital, and the costs of assembling, line-haul service, and distribution. The balance, amounting to as much as 45 cents per 100 pounds, is refunded each month to the members of the association.

The operations of the association are physically and

---

[1] Shipbuilders, automotive supply companies, hardware jobbers, marine supply companies, mine and smelter supply companies, bridge and dredging companies, and machinery and supply companies.

functionally the same as those of the conventional and regulated freight forwarder, i. e., small shipments are brought into and assembled at Chicago, Ill., where they are consolidated into carload shipments. These latter shipments are handled by rail to one (or more) of the association's 8 distributing points[2] at which they are broken up and distributed to association members (or to customers of such members). The association handles business for sale and distribution in the States of California, Arizona, Oregon, Washington, Idaho, Utah, and Nevada.

Every pound of freight handled by the association constitutes traffic which, but for the association, would normally be handled by the regulated freight for forwarder. If so handled, however, the regulated forwarder would have to apply his published tariff rate without deviation—he could not make refunds of as much as 45 cents per 100 pounds to his patrons. Additionally, he is under the constant and expensive burdens of regulation such as the filing of tariffs, the keeping of accounts, the rendition of periodic reports all of which the association completely escapes.

Finding themselves unable to compete for traffic under such circumstances the regulated forwarders petitioned the Commission to compel this forwarder in everything but name to cease and desist from operating without the permit required by the statute. An investigation was had upon the conclusion of which the Commission found (264 I. C. C. 134) that the activities of the association, as *then* disclosed, were properly subject to the exemption above referred to.

Later, upon petition of the Freight Forwarders Institute a second investigation was instituted. Upon this second investigation it was developed that with respect to a very substantial portion of the business handled by the associa-

[2] Los Angeles, Cal., San Francisco, Cal., Portland Ore., Spokane, Wash., Seattle, Wash., Yakima, Wash., Phoenix, Ariz., and Salt Lake City, Utah.

tion for its constituent membership, the freight charges were either (a) fully prepaid at point of origin by the nonmember consignor, or (b) such charges, paid at destination, were allowed to be deducted, as such, from the consignor's selling price. But, notwithstanding the consignee members had actually paid no freight charges, "refunds" amounting to as much as 45 cents per 100 pounds were, and continued to be, made to them.

On this showing the Commission found (269 I. C. C. 504), in effect, that as to such traffic the association was not only functioning "for profit" but that it was serving a sufficient segment of the shipping public to meet the definition of a freight forwarder as contained in section 402(5) of the act. Since the association had no permit to operate as a freight forwarder, as required by section 410(a) of the act, it was ordered to cease and desist from carrying on such activities where freight charges were either "prepaid" or "allowed" as aforesaid. It is that order which the district court has set aside.

The Questions Presented are Substantial

If the decision of the district court is allowed to stand, two things are obvious. The remedial legislation by virtue of which Congress sought to bring freight forwarders and freight forwarding within the sweep of Federal regulation may be completely thwarted by the simple expedient of setting up an "association" with a paid manager and observing the corporate forms. Secondly, the regulated forwarding industry cannot survive in the face of such unfair competition. The element of "profit" inherent in any "forwarding" operation for which exemption is sought is the touchstone controlling application or nonapplication of the statute. On this question the Commission has acted realistically. It requires sheer sophistry and an overindulgence

in semantics to conclude that a consignee is not profiting when he receives a refund out of something he did not pay.

It is of extreme importance to the freight forwarding industry and the public which it serves that the question here presented should be finally and authoritatively decided.

Copies of the District Court's opinion of January 24, 1949, its findings of fact, conclusions of law, and final decree, all dated February 18, 1949, are appended hereto.

Dated April 12, 1949.

FRANK D. CATLIN,
Title Insurance Building,
Los Angeles 13, California.
HARRY C. AMES,
Transportation Building,
Washington 6, D. C.,
Attorneys for Intervener.

APPENDIX "A"

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, *Plaintiffs*,

v.

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, *Intervenors*

OPINION

Before Stephens, Circuit Judge, and Yankwich and Mathes, District Judges

MATHES, District Judge:

Plaintiffs, a nonprofit California corporation, and individuals comprising its board of directors, seek by this action "to enjoin, set aside, suspend and annul a certain report, requirement and order of the Interstate Commerce Commission." Jurisdiction of this court is invoked under 28 U. S. C., Sec. 1336 (formerly Sec. 41(28).)

Hearing and determination of the cause by "a district court of three judges" is required by 28 U. S. C., Sec. 2325 (formerly Sec. 47), and this court was accordingly designated by the Chief Judge of the Circuit pursuant to 28 U. S. C., Sec. 2284.

The challenged action of the Commission followed "an inquiry and investigation . . . under Sec. 403(f) of the Interstate Commerce Act, instituted . . . for the purpose of determining whether the operations of the Pacific Coast Wholesalers' Association, a corporation, . . . or of its directors, officers, or representatives are in violation

of any provision of part IV of the act, or of any rule, regulation or requirement issued or established pursuant thereto . . ." (264 I. C. C. 134).

In the language of the Commission's report of November 26, 1945 (264 I. C. C. 134), "the association was formed March 27, 1935, by a small group of dealers in automotive parts at Los Angeles, California, as a voluntary unincorporated, nonprofit association, (and was later incorporated) for the purpose of promoting the interest of its members, and to provide a means of assembling, consolidating, forwarding and distributing freight for its members, on a nonprofit basis, and for the purpose of securing the benefits of carload, truckload, or other volume rates . . . No freight is handled for nonmembers . . . Believing that it was exempt under the provisions of Sec. 402(c) of part IV of the act, neither the association nor the corporation filed an application for a permit to operate as a forwarder."

The report of November 26, 1945, concluded: "It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates, and that the association is operated on a nonprofit basis. These are operations of the character contemplated by the exemption referred to, and may be continued without obtaining authority therefor from this Commission." Thereupon the Commission entered an order: "That this proceeding be, and it is hereby, discontinued."

Thereafter, upon petition of Freight Forwarders Institute, as intervenor, the proceedings were reopened and further hearings held. On December 18, 1947, a "Report of the Commission on Further Hearing" was filed (269 I. C. C. 504), setting aside the report of November 26, 1945.

In the second report, the Commission found, inter alia:

> "All of the shipments involved are consigned from eastern origins to the association at Chicago upon instructions of the members, and are there consolidated in carloads and forwarded to destinations or break-bulk

points and distributed to members of the association or to their customers in the destination areas . . .

"The bills of lading show the association as consignee, and Chicago as destination, with notations thereon showing the ultimate consignee and destination. They also bear, in the space provided therefor, the notations 'prepay,' 'prepay through', 'collect to Chicago and prepay through', or words of similar purport. Most of the freight bills show the charges as having been prepaid. Some of the invoices show deductions for freight allowed; and in other instances where the charges were billed collect, debit memoranda were issued by the member consignees against the consignors for the amount of the charges, or credit memoranda were issued by the consignors in favor of the consignees.

"In most instances, although the bills of lading are endorsed prepaid, the charges were not actually prepaid to the originating carrier at the time of shipment. Under a credit arrangement between the consignor and the association, the goods were billed collect to Chicago, and upon arrival the association advanced the charges to the originating carrier for its haul to Chicago and issued the association's prepaid freight bill from the point of origin to the final destination, and collected the charges from the consignor. If the charges to Chicago actually were prepaid to the originating carrier, the amount paid is credited on the association's freight bill. In other words, the association advances the charges to the consolidating point and collects from the consignor the forwarder's through less-than-carload rate from origin to destination, plus 3 percent of the total freight charge.

"At destination the freight is delivered to the member consignees or to their non-member customers without additional charge. Thereafter the member is credited with the difference between the amount paid by the consignor, and the costs borne by the association for transportation, administration, handling, distribution, taxes, etc. No refunds are made to the non-member consignors who paid the charges in the manner stated.

". . . The consolidation of such shipments, including those delivered to customers of the members, and the payment to the members of the 'savings' resulting therefrom, is common practice.

"By far the greater part of the traffic is billed to the members as sub-consignees. A relatively minor part is billed to customers of the members at the direction of the latter. All transactions relating to the purchase and sale of the customer goods are between the members and the consignors . . .

"The so-called 'savings' are the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged by the association of 13 cents for administration, 2.25 cents for billing and mailing arrival notices, and 1.125 cents for insurance, on the other hand.

"These differences or 'savings' are paid to the member consignees, regardless of the fact that the charges were collected from the consignors. Occasionally losses are sustained by the consignees because of the inclusion in the consolidated carloads of goods not subject to carload rates, but generally the association attempts to handle only freight on which a saving may be effected . . .

"The evidence clearly shows, and it is admitted by the members of the association and by its general manager, that 'refunds' are made to the members of a portion of the freight charges paid by non-member consignors."

The Commission thereupon concluded:

"(1) That the association's service in connection with shipments from nonmember-consignors to mem-

ber-consignees and their customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the association's members and is not performed on a non-profit basis within the meaning of Sec. 402(c)(1) of the act;

"(2) That the operations of the association as described . . . are those of a freight forwarder in interstate commerce within the meaning of Sec. 402(a)(5) of the act, and that continuance thereof without a permit is in violation of Sec. 410(a) of the act and therefore unlawful; [and]

"(3) That respondents [the individuals] to the extent that they are parties to such unlawful operations, are likewise in violation of Sec. 410(a) of the act."

The "requirements" of the Commission accompanying the report of December 18, 1947, read:

> "Respondents will be expected (a) to discontinue on or before March 4, 1948, the operations herein found to be unlawful and (b) to notify the Commission on or before March 19, 1948 in writing under oath that such operations have been discontinued."

The Commission has construed the somewhat equivocal verb phrase "will be expected" to connote a command. [cf. *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 143-144 (1939).]

The petition for reconsideration having been denied, respondents commenced this action on August 30, 1948, to set aside the above quoted requirements. The "effective dates of the aforesaid requirements" have been postponed from time to time by order of the Commission, and now await final judgment herein. Both the Commission and Freight Forwarders Institute have intervened on the side of the defendants and have filed answers and briefs.

The Commission's action in question was taken under the authority of Sec. 403(f) of the Interstate Commerce Act, as amended, (49 U. S. C., Sec. 1003(f)):

> "The Commission may investigate, either upon complaint or upon its own initiative whether any freight forwarder has failed to comply with any provision of

> this chapter . . . and, after notice and hearing, take appropriate action to compel compliance therewith."

Jurisdiction to set aside a "requirement" of the Commission is conferred upon this court in Sec. 17(9) of the Act (49 U. S. C., Sec. 17(9)):

> "When an application for rehearing . . . or reconsideration of any . . . requirement . . . shall have been denied . . . by the Commission . . ., a suit to enforce, enjoin, suspend, or set aside such . . . requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise."
>
> See: (28 U. S. C., Sec. 1336 (formerly Sec. 41(28); cf. *Columbia Broadcasting System* v. *United States*, 316 U. S. 407, 417 (1942); *United States* v. *Los Angeles R. R.*, 273 U. S. 299, 309-312 (1927).)

However, as said in *Rochester Tel. Corp.* v. *United States*, supra, 307 U. S. 125, 139-140 (1939), "the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable."

The full record before the Commission has been brought here, and it appears beyond dispute that there is evidence of substance to support the Commission's findings of fact (*Louisiana etc. Ry. Co.* v. *United States*, 257 U. S. 114, 116 (1921); *I. C. C.* v. *Union Pacific*, 222 U. S. 541, 547-548 (1912)). "The findings in the report being thus accepted as true, there is left only the inquiry whether they give support to the conclusion . . . The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." (*Miss. Valley Barge Co.* v. *United States*, 292 U. S. 282, 286-287 (1934).)

The courts will not consider the wisdom of the "requirement" in question, or substitute their judgment for that

of the Commission (*Assigned Car Cases*, 274 U. S. 564, 580 (1927); *New England Divisions Case*, 261 U. S. 184, 204 (1923); *I. C. C.* v. *Illinois Central R. R.*, 215 U. S. 452, 470 (1910)). So the precise question here is whether the facts found by the Commission show respondent Pacific Coast Wholesalers' Association to be a "freight forwarder" within the meaning of Sec. 402 of the Interstate Commerce Act (49 U. S. C., Sec. 1002). Section 402(a)(5) provides that:

> "The term 'freight forwarder' means any person which (otherwise than as a carrier subject to chapter 1, 8, or 12 of this title) holds itself out to the general public to transport or provide transportation of property, . . . for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to chapter 1, 8 or 12 of this title."

Section 402(c) of the Act (49 U. S. C., Sec. 1002 (c)) declares that:

> "The provisions of this chapter shall not be construed to apply . . . to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates . . ."

The December 18, 1947 report of the Commission states: "Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember-consignors, the association is operating for hire and therefore

for profit." But earlier in the report the Commission found that: "All transactions relating to the purchase and sale of the customer goods are between the members and the consignors." And further that: "These differences or 'savings' are paid to the member consignees, regardless of the fact that the charges were collected from the consignors."

It is true of course, as the Commission points out, that "where goods are f.o.b. destination, it is ordinarily the seller who bears the freight, who suffers from the excessive charges," and the purchaser who pays the freight does so "solely as agent of the seller" (*Louisville & Nashville R. R. Co.* v. *Sloss-Sheffield etc. Co.*, 269 U. S. 217, 235, 238 (1925)). But those are matters of contract between the seller-consignor and the purchaser-consignee.

Here the determinative inquiry is not as to agency as between consignor-seller and consignee-member (cf. Adams v. Mills, 286 U. S. 397, 406-407 (1932)), but as to the agency relationship between both or either of them and the association. And the facts found by the Commission admit of but one conclusion as to this: That the association at all times acts solely at the request, and under the direction, and for the account and benefit, of the member-purchaser. As between member and association, then, the former always acts as principal, the latter as agent.

The existence of this agency is implicit in the findings of the Commission. The report states that "All of the shipments involved are consigned . . . upon instructions of the members" of the association. Admittedly, the facilities of the association are not available to a nonmember shipper otherwise than through arrangements made by a member. And the necessary arrangements are that the member as principal instruct the association as agent to handle the shipment. Moreover, both the purpose and the result of the transaction is not to benefit the shipper, but to reduce transportation costs to the member through savings effected in cooperation with other members who likewise employ the association as transportation agent.

When this principal-agent relationship between member-purchaser and the association is borne in mind it is clear

that there is no profit to the association from the activities described in the Commission's report (49 U. S. C., Sec. 1002(c)); and it is equally clear that the association, as agent for the members, does not "hold itself out to the general public to . . . provide transportation of property . . . for compensation" (49 U. S. C., Sec. 1002(a)(5)).

The court is of opinion therefore that inasmuch as respondent association acts only as agent of its members "in consolidating or distributing freight . . . for the members . . . on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates," respondents are not subject to regulation in such activities by the Commission pursuant to part IV of the Interstate Commerce Act. Which is to say that the conclusions reached by the Commission in the report of November 26, 1945 (264 I.C.C. 134) were correct.

Accordingly the court holds that the conclusions and requirements of the Commission, predicated upon the report of December 18, 1947 (269 I.C.C. 504), have no rational basis, and must be set aside.

Plaintiffs will submit findings of fact, conclusions of law and judgment setting aside the requirements of the Commission as prayed for, pursuant to local rule 7 within ten days.

January 24, 1949.

ALBERT LEE STEPHENS,
Circuit Judge.
LEON R. YANKWICH,
District Judge.
WM. C. MATHES,
District Judge.

APPENDIX "B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, *Plaintiffs*,

v.

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, *Interveners*.

Hugh Gordon, Gordon, Knapp and Hennessy, 453 South Spring Street, Los Angeles 13, California, MIchigan 1997, Attorneys for plaintiffs.

Findings of Fact and Conclusions of Law

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James M. Carter, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America; Daniel W.

Knowlton, Chief Counsel of the Interstate Commerce Commission and H. L. Underwood, Attorney for the Interstate Commerce Commission appearing by H. L. Underwood for the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleadings submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I.C.C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument and having heretofore filed herein its written opinion, and good cause appearing;

Now, Therefore, said court makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

1. Plaintiff, Pacific Coast Wholesalers' Association, is a non profit corporation organized pursuant to the provisions of Division First, Part IV, Title XII of the Civil Code of the State of California and has its principal place of business in Los Angeles, California. It has no capital stock, does not earn or declare dividends and membership therein, limited under the by-laws to fifty, is evidenced by non-transferable membership certificates.

2. Plaintiffs, Elmer J. Jensen, Percy T. Lyon and Ira C. Lambert, members of the Board of Directors, and G. A. Olson and Sol Smith, employees of said Association, are residents of the Southern District of California.

3. The members of the said Association are and at all times referred to herein have been engaged in business in the states of California, Oregon, Washington, Utah and Arizona, as wholesalers of automotive parts, machinery, hard-

ware and other articles of property, purchased by said members from manufacturers or other suppliers located at various points east of Chicago, Illinois, and who are not members of the said Association.

4. All transactions relating to the purchase and sale of the goods comprising the said shipments are between the members of the Association, as purchasers, and the non-member consignors, as sellers, whereby provision is made in some instances for payment by the sellers, as a credit on the purchase price of the goods, of all or some portion of the amount of freight charges which would accrue on each shipment if transported under the prevailing freight forwarder rates applicable to such shipment from origin to final destination.

5. Said Association was organized and is operated to provide a means of assembling, consolidating, forwarding, and distributing freight for its members on a non-profit basis for the purpose of securing for its members the benefits of car load, truck load and other volume rates and the freight so assembled, consolidated, forwarded and distributed by the Association is comprised exclusively of property purchased by its members as aforesaid from manufacturers and other suppliers east of Chicago, Illinois.

6. At destination the freight is delivered by the Association to the member consignees or their customers and thereafter the member is credited with the difference between the amount paid by the consignor for the account of the member and the costs borne by the Association for transportation, administration, handling, distribution, taxes, and other incidental costs. No refunds are made to the non member consignors who paid freight charges or made freight allowances in the manner aforesaid.

7. The facilities of the Association are not available to a non member shipper otherwise than through arrangements made by a member wherein the member instructs the Association to handle the shipment comprising goods purchased by and consigned to such member or to a customer of such member.

8. By order dated May 6, 1944, the Interstate Commerce Commission instituted a proceeding of inquiry and investi-

gation under Section 403 (f) of the Interstate Commerce Act for the purpose of determining whether the operations of Pacific Coast Wholesalers' Association, a corporation, or its directors, officers, or representatives are in violation of any provision of Part IV of said Act or of any rule, regulation, or requirement issued or established pursuant thereto. Said proceeding is docketed and designated in the files of the Interstate Commerce Commission as "Ex Parte 160—Pacific Coast Wholesalers' Association—Investigation of States."

9. Hearings were held in said proceeding, Ex Parte 160, evidence both oral and documentary was received, briefs filed and oral argument had, following which the Interstate Commerce Commission, on December 18, 1947, rendered its Report wherein the Commission stated its Findings of Fact the substance and effect of which are contained in the Findings of Fact of the Court herein, and concluded therefrom as follows:

> "(1) That the Association's service in connection with shipments from non member-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the Association's members and is not performed on a non profit basis within the meaning of Sec. 402 (c)(1) of the Act;
>
> (2) That the operations of the Association as described . . . are those of a freight forwarder in interstate commerce within the meaning of Sec. 402 (a)(5) of the Act, and that continuance thereof without a permit is in violation of Sec. 410 (a) of the Act and therefore unlawful; (and)
>
> (3) That respondents (the individuals) to the extent that they are parties to such unlawful operations, are likewise in violation of Sec. 410 (a) of the Act."

10. By its said Report of December 18, 1947, the Interstate Commerce Commission further set forth its requirements that on or before certain specified dates respondents discontinue the operations found by said Report to be un-

lawful and to notify the Commission in writing, under oath, that such operations had been discontinued.

11. Thereafter a Petition for Reconsideration was duly filed by respondents in said proceeding before the Interstate Commerce Commission which petition was denied by the Commission prior to the commencement of this action wherein the said respondents, as plaintiffs herein, invoke the jurisdiction of this court under 28 U.S.C. Sec. 1336 and 49 U.S.C. Sec. 17 (9) to enjoin, set aside, suspend, and annul the said Report and Requirements of the Interstate Commerce Commission rendered December 18, 1947, in said proceeding, Ex Parte 160.

Conclusions of Law

1. The Association in assembling, consolidating, forwarding, and distributing freight for its members including shipments from non member consignors to member consignees and their customers of goods sold on a f.o.b. destination or delivered price basis acts exclusively as the agent of the member consignees and not as the agent of the non member consignors.

2. There is no profit to the Association resulting from its activities as the transportation agent of its members in assembling, consolidating, forwarding, and distributing freight for its said members.

3. The Association in its said activities as transportation agent of its members does not hold itself out to the general public to provide transportation of property for compensation.

4. The Association's services in connection with shipments from non member-consignors to member-consignees and their customers of goods sold on a f.o.b. destination or delivered price basis is a service for the Association's members and is performed on a non profit basis within the meaning of Section 402 (c)(1) of the Interstate Commerce Act.

5. The operations of the Association, its directors, officers and employees in assembling, consolidating, forwarding,

and distributing freight for the members of the Association are not those of a freight forwarder in interstate commerce within the meaning of Section 402 (a) (5) of the Interstate Commerce Act and continuance thereof without a permit issued by said Commission is not in violation of Section 410 (a) of the Interstate Commerce Act or otherwise unlawful.

The conclusions and requirements of the Interstate Commerce Commission predicated upon its Report of December 18, 1947, in its proceeding Ex Parte 160 have no rational basis and should be set aside.

Dated: February, 1949.

____ ____,
Circuit Judge;

____ ____,
District Judge;

____ ____,
District Judge.

APPENDIX "C"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

No. 8588-WM

PACIFIC COAST WHOLESALERS' ASSOCIATION, a Corporation, and ELMER J. JENSEN, PERCY T. LYON, IRA C. LAMBERT, G. A. OLSON and SOL SMITH, *Plaintiffs*,

v.

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION and FREIGHT FORWARDERS INSTITUTE, *Interveners*

DECREE ANNULLING, SETTING ASIDE AND ENJOINING ENFORCEMENT OF REQUIREMENT BY INTERSTATE COMMERCE COMMISSION

Hugh Gordon, Gordon, Knapp and Hennessy, 453 South Spring Street, Los Angeles 13, California, MIchigan 1997, Attorneys for plaintiffs.

The above entitled cause came on regularly for trial on October 26, 1948, before a special court composed of three judges, the Honorable Albert Lee Stephens, Circuit Judge presiding, and Honorable Judges Leon R. Yankwich and William C. Mathes, District Judges; Hugh Gordon and Gordon, Knapp and Hennessy appearing by Hugh Gordon as counsel for plaintiffs; Herbert A. Bergson, Assistant Attorney General, Edward Dumbauld, Special Assistant to the Attorney General, James M. Carter, United States Attorney, Clyde C. Downing, Assistant United States Attorney, and James C. R. McCall, Jr., Assistant United States Attorney appearing by Edward Dumbauld as counsel for the defendant, the United States of America; Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Com-

mission and H. L. Underwood, Attorney for the Interstate Commerce Commission appearing by H. L. Underwood for the Interstate Commerce Commission, Intervenor; and Messrs. Harry C. Ames and Giles Morrow appearing by Giles Morrow for Freight Forwarders Institute, Intervenor;

Said court having examined the pleadings submitted by the respective parties and the full record of the proceeding before the Interstate Commerce Commission culminating in the "Report of the Commission on Further Hearing" filed December 18, 1947, and reported in 269 I.C.C. 504; and said court having heard the arguments of said respective parties; and

Said court having fully considered such pleadings, record, and argument, and having heretofore filed herein its written opinion and Findings of Fact and Conclusions of Law; and good cause appearing;

Now, Therefore, it is hereby decreed as follows:

That the requirements of the Interstate Commerce Commission as set forth in the Report of the Commission on Further Hearing, filed December 18, 1947, in its proceeding, Ex Parte 160, that the respondents therein discontinue the operations found by said Report to be unlawful, and notify the Commission in writing, under oath, that such operations have been discontinued be and the same are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined.

Dated: February, 1949.

____ ____,
Circuit Judge;

____ ____,
District Judge;

____ ____,
District Judge.

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2 Williston on *Sales* (Rev. ed. 1948) § 280b	18, 31

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 113

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the district court for the Southern District of California (R. 49) is reported in 81 F. Supp. 991. The reports of the Interstate Commerce Commission (R. 12, 23) appear in 264 I.C.C. 134 and 269 I.C.C. 504.

JURISDICTION

The final decree of the three-judge district court was entered on February 18, 1949 (R. 61). The petition for appeal was presented and allowed on

April 12, 1949 (R. 63, 66). The jurisdiction of this Court is conferred by 28 U.S.C. 1253, 2101(b), and 2325. Probable jurisdiction was noted on October 10, 1949 (R. 772).

QUESTIONS PRESENTED

The Pacific Coast Wholesalers' Association undertakes to provide transportation of any and all goods consigned by eastern suppliers to the Association's members or their customers in western areas, and has provided such transportation for over 38 million pounds of goods per year. In the case of goods shipped on a "delivered price" or "f.o.b. destination" basis the freight charges collected from the suppliers are in excess of the costs to the Association in providing the transportation, and the net proceeds thus acquired are passed on by the Association to its members. The questions presented are:

1. Whether the Commission acted without rational basis in concluding that in providing transportation of goods for suppliers of its members at rates greater than cost, the Association's operations are not on a "nonprofit" basis within the meaning of Section 402(c) of the Interstate Commerce Act.

2. Whether the Interstate Commerce Commission acted without rational basis in concluding that the Association "holds itself out to the general public" to provide transportation of property, or a class or classes of property, within the meaning of Section 402(a)(5) of the Interstate Commerce Act.

STATUTE INVOLVED

Section 402 of Part IV of the Interstate Commerce Act, 56 Stat. 284, 49 U. S. C. 1002, provides in part:

(a) For the purposes of this part—

* * * * *

(5) The term "freight forwarder" means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act.

* * * * *

(7) The term "service subject to this part" means any or all of the service in connection with the transportation in interstate

commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the authority of this part to perform or provide;

* * * * *

(b) The provisions of this part shall not apply (1) to service performed by or under the direction of a cooperative association, as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, or (2) where the property with respect to which service is performed consists of ordinary livestock, fish (including shellfish), agricultural commodities (not including manufactured products thereof), or used household goods, if the person performing such service engages in service subject to this part with respect to not more than one of the classifications of property above specified.

(c) The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, or (2) to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and

responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed.

Section 403, 49 U. S. C. 1003, provides in part:

(a) It shall be the duty of the Commission to administer the provisions of this part, and to that end it shall have the authority to make and amend such rules and regulations and to issue such orders as may be necessary to carry out its provisions.

* * * * *

(f) The Commission may investigate, either upon complaint or upon its own initiative, whether any freight forwarder has failed to comply with any provision of this part or with any order, rule, regulation, or requirement issued or established pursuant thereto, and, after notice and hearing, take appropriate action to compel compliance therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for action on its part, it may dismiss such complaint.

Section 410, 49 U. S. C. 1010, provides in part:

(a) No person shall engage in service subject to this part unless such person holds a permit, issued by the Commission, authorizing such service; * * *

STATEMENT

The proceedings culminating in the present appeal commenced in 1944 with an investigation by

the Interstate Commerce Commission to determine whether appellee Pacific Coast Wholesalers' Association [1] was conducting freight forwarding operations in a manner violative of Part IV of the Interstate Commerce Act, 56 Stat. 284, 49 U. S. C. 1001 *et seq.* (R. 13). After hearings, the Commission (Division 4) determined that on the evidence then before it no violations had been shown, and in November, 1945, the proceeding was ordered discontinued (R. 13, 22-23). Thereafter, upon petition of Freight Forwarders Institute (appellant in No. 114), the proceeding was reopened for further hearings, and additional evidence was received (R. 25). In December, 1947, the Commission (Division 4) issued a further report in which it was determined that the freight operations revealed by the additional evidence constituted appellee Pacific Coast Wholesalers' Association a freight forwarder within the statutory definition as to a certain portion of its operations, and that the conduct of those operations without a permit from the Commission was a violation of Section 410(a) of the Act (R. 23). The Commission ordered appellees to discontinue the operations found to be unlawful (R. 36).

Appellees then brought the present action against the United States to have the Commission's order set aside, and appellants Interstate Commerce Commission and Freight Forwarders Insti-

[1] The other appellees are individuals who constitute the board of directors and principal officers of the Association.

tute intervened (R. 1, 38, 39). The instant appeal was taken by the United States and Interstate Commerce Commission from the decree of a three-judge district court (R. 61) setting aside and enjoining enforcement of the Commission's order based upon the court's opinion that the order was without "rational basis" (R. 56).[2]

The issue here presented is whether, on the findings of fact made by the Commission,[3] there was a rational basis for its conclusion that the activities of appellees with respect to goods sold f.o.b. destination are those of a freight forwarder within the meaning of Section 402 of the Interstate Commerce Act (*supra*, p. 3). The pertinent facts may be briefly stated.

Appellee Pacific Coast Wholesalers' Association was formed in 1935 by a group of seven automotive parts dealers in Los Angeles, California, as a voluntary, unincorporated, nonprofit association to provide a means of assembling, consolidating, forwarding and distributing freight for its members with the benefits of carload, truckload, or other volume rates. The constitution and by-laws of the Association at that time limited membership to business organizations operating in any of seven western states whose volume of sales at wholesale exceed 75% of their entire sales. (R. 13-14.)

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[2] The appeal of Freight Forwarders Institute (No. 114) has been consolidated with the present case for oral argument.

[3] The court below not only accepted the Commission's determinations of fact but specifically found them to be supported by substantial evidence (R. 54).

In 1943, after the enactment of Part IV of the Interstate Commerce Act providing for regulation of freight forwarders, the Association was incorporated as a California corporation (R. 14). The restriction on membership was liberalized so as to permit admittance not only of "persons, firms, or corporations engaged in business as wholesalers," but of those "in such other business or activity as may be approved by the board of directors [within named states]." Membership was limited to 50, but this limitation was made subject to alteration by an amendment to the by-laws approved by a majority of the directors. (Comm. Ex. 1, not printed.[3a] By 1945 the Association had grown to 41 members,[4] and that year it consolidated 54,412 less-than-carload shipments aggregating 38,033,341 pounds and issued freight bills amounting to $1,195,831.71 (R. 28). The Association's members were principally wholesalers of hardware and automotive supplies but they included a shipbuilding company, a mine and smelter supply company, a marine supply company, and a bridge and dredging company (Comm. Ex. 22, p. 22, not printed).

[3a] The parties have stipulated (R. 767) that all exhibits may be referred to whether or not included in the printed record.

[4] As of February, 1947 the membership was 38. The members have their main offices in major cities in California, Colorado, Michigan, Minnesota, Oregon, Washington, Utah, and Wisconsin, with branch stores in some of those states, and in Arizona, Montana, Idaho, Alaska, and Yukon Territory. Each member serves from 1 to 35 towns or cities in the above States and territories, and in Nevada, Wyoming, British Columbia, and Hawaii. (R. 25.)

The Association has never applied to the Commission for the permit to operate required for freight forwarders by Section 410(a) of the Act (*supra*, p. 5) (R. 15).

The Association handles freight physically in the same manner as do regular freight forwarders.[5] In respect of the operations here at issue—shipments f. o. b. destination or on a delivered price basis—the freight charges are borne by the suppliers, and the Association charges the suppliers the same rates for its freight handling as those charged by ordinary freight forwarders. It thus receives the benefit of the difference between the freight forwarder rates and the carload or truckload rates which it pays to the underlying carriers. In short the Association reaps the same economic benefit from its activities as is received by a commercial forwarder from similar operations.[6] The

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[5] As counsel for appellees unequivocally put it in the hearings before the Commission (R. 383):

> * * * the physical handling of this freight, if the Examiner please, by the P. C. W. A. or by Mr. Olson on behalf of the P. C. W. A. is exactly the same as the physical handling and the consolidation of the shipments and the forwarding of the shipments by a freight forwarder * * *.

[6] The economic basis of the freight forwarder business has been aptly described by this Court as follows:

"Freight forwarders consolidate less-than-carload freight into carloads for shipment by rail, truck, or water. Their charges approximate rail less-than-carload rates; their expenses and profits are derived from the spread between the carload and l.c.l. rates." *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *Acme Fast Freight, Inc.*, 336 U.S. 465, 467.

economic gain[7] derived from the Association's freight operation is not, however, retained by the Association itself, but is passed on to its members in the form of "freight savings" or "refunds", which, in the words of the Commission amount to:

> the differences between the charges at the less-than-carload or less-than-truckload forwarder rate from origin to destination, plus 3 percent thereof, on the one hand, and the cost to the association of assembling, consolidating, transporting, and distributing the freight, including the inbound charges to Chicago, the terminal expenses at that point, carload charges from Chicago to destination or break-bulk points, terminal and distributing costs, and transportation taxes, plus additional items charged by the association of 13 cents for ad-

[7] The magnitude of this gain is reflected in the following table:

Year	Tonnage Handled Pounds	Revenue	Expenses	"Savings"
1942	19,650,654	$ 591,198.91	$ 527,388.95	$ 60,522.15
1943	44,070,867	1,349,150.73	1,181,721.84	157,125 28
1944	42,018,232	1,342,880.49	1,184,997.29	136,138.32[1]
1945	38,033,341	1,195,831.71	1,076,892.33	118,939.38

[1] Not complete.

The 1945 "savings" represent an average of 31.29 cents per hundred pounds or 9.94 percent of the total amount of the freight bills issued. The operations here involved—i.e. delivered price or f.o.b. destination transactions—are generally handled either on a "prepaid" or "freight allowed" basis. In other words the consignor-supplier either prepays the freight charges, or they are deducted by the member consignee from the invoice price of the goods. Of the 1945 savings the Commission estimated that approximately $11,894 represented savings on prepaid charges. The Commission also found that there was a substantial, although unascertained, "saving" on freight allowances. (R. 17, 28, 29.)

ministration, 2.25 cents for billing and mailing arrival notices, and 1.125 for insurance, on the other hand. [R. 27-28.]

The operations of the Association are conducted by appellee Olson, who has the title of General Manager, but whose activities closely resemble those of an independent contractor. Olson receives a fee or commission of 13 cents per 100 lbs. on all freight handled by the Association. He pays his own administrative expenses. He exercises extensive control over the Association's business and dominates its shipping activities. He is also a principal stockholder in the Transport Terminal Company which acts as the Association's agent in Chicago, where the Association's shipments are received from the East, consolidated and forwarded to western break-bulk points. (R. 17-18, 20-21.)

The substantial freight business of the Association is not obtained by direct solicitation by its officers or employees. The members simply direct or request their suppliers to use the Association's facilities. The suppliers are instructed to consign their shipments from eastern origins to the Association's agent at Chicago, which consolidates the shipments in carloads for movement by rail thence to break-bulk points (R. 25).

The particular operations found by the Commission to constitute the Association a freight forwarder under the statutory definitions involve the handling of goods sold to the members on a deliv-

ered price or f.o.b destination basis.[8] In this type of transaction the supplier pays for the transportation. Consequently, the members of the Association benefit to the extent of the difference between the rates which the suppliers are compelled to pay and the reduced rates which are paid by the Association to the underlying carriers. At the present time the Association limits itself to freight consigned to its members or their customers, but as recently as 1944 and 1945 it handled substantial quantities of freight consigned to a nonmember—the United States Maritime Commission—and passed on to it the "savings" of $24,201.97 thereby earned (R. 25-26).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that the Pacific Coast Wholesalers' Association operates on a nonprofit basis in assembling, consolidating, forwarding and distributing freight shipped to its members or their customers by non-members of the Association on an "f.o.b. destination" or "delivered price" basis.

2. In holding that in the conduct of the above-described operations the Association does not hold

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[8] The operations of the appellees involving goods shipped to the members of the Association f.o.b. *origin* (i.e. the freight costs to be borne by the member-purchaser) have been determined not to constitute freight forwarding (R. 12-22), and are not at issue here. Such operations represent the major portion of the Association's business. See note 7, *supra*, p. 10.

itself out to the general public to provide transportation of property for compensation.

3. In entering a decree setting aside and enjoining enforcement of the order of the Interstate Commerce Commission requiring appellees to discontinue the portion of their operations found to be unlawful.

SUMMARY OF ARGUMENT

I

Section 402(c) of the Interstate Commerce Act declares the provisions for the regulation of freight forwarders inapplicable to associations of shippers consolidating freight for their members on a non-profit basis in order to secure the benefits of volume rates. The Interstate Commerce Commission correctly determined that appellee Pacific Coast Wholesalers Association is not within the protection of Section 402(c) in handling freight consigned to its members and their customers on an f.o.b. destination or delivered price basis. By charging the seller the full forwarder's "less than carload" rate, and shipping the freight in carload lots, the Association makes precisely the same profit which is made by a conventional freight forwarder. If the revenue so obtained were refunded to the sellers, who bear the freight charges, it would be a freight saving to the shippers. But the revenue here is paid to the Association's members, who do not pay the freight charges and to whom it is a clear profit.

Even if it could be reasonably concluded that

the Association does not operate on a profit basis in handling the freight of others to its economic benefit, the construction by the Commission of the law which it administers should not have been set aside, since it had warrant in the record and a reasonable basis in law.

II

The Commission correctly determined that appellee Association holds itself out to serve the general public within the meaning of Section 402(a)(5) of the Interstate Commerce Act and is, therefore, subject to regulation as a freight forwarder. The Association serves all the suppliers of its members and handles a volume of 38 million pounds a year. Nobody serves all the public, and it is sufficient if one serves an appreciable segment of the public and stands ready to serve all who fall within a particular class or classes.

III

In acting as a freight forwarder without a permit the Association has been violating Section 410 of the Interstate Commerce Act. The Interstate Commerce Commission properly ordered it to discontinue the activities which constitute it a freight forwarder.

ARGUMENT

Introduction

This case presents for the first time the question as to the scope of the term "freight forwarder",

within the meaning of Part IV of the Interstate Commerce Act, which was added to the Act in 1942, and which provides for regulation of the forwarder industry.[9] The Commission is given general powers to regulate the rates and practices of freight forwarders similar to those it possesses in respect of rail, motor and water carriers under Parts I, II, and III of the Act respectively.[10] The Commission has the duty to administer Part IV (Section 403(a), *supra*, p. 5) and the power to investigate whether any freight forwarder has violated it (Section 403(f), *supra*, p. 5). Although a permit from the Commission to operate as a freight forwarder is required (Section 410), the Commission is not empowered to deny such a permit solely on the ground that the proposed service will be in competition with existing freight forwarders. (Section 410(d)). The Commission may prescribe just and reasonable rates (Section 406). Freight forwarders may not discriminate among shippers (Section 404); they must file tariffs and adhere to the rates there published (Section 405); a freight forwarder may not, with certain exceptions, be controlled by or control a carrier or person who utilizes services of freight forwarders in his business (Sec-

[9] The status of a freight forwarder as a shipper or common carrier was considered at the last term of the Court in *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *Acme Fast Freight, Inc.*, 336 U.S. 465.

[10] For a section by section description of the bill substantially in the form which became Part IV, see H. Rep. 1172, 77th Cong., 1st. Sess.

tion 411); and he may be required to submit various reports (Section 412).

"Freight forwarder" is defined generally to include one who transports or provides transportation in commerce (other than carriers under Parts I, II, and III) for compensation, provided (1) that he holds himself out to the general public to provide transportation services, (2) that he provides for the assembling and concentrating operations and the break-bulk and distributing operations in the through movement of property, (3) that he assumes responsibility for the transportation and safety of the property from point of receipt to point of destination and (4) that he utilizes the services of carriers regulated under Parts I, II, and III of the Act (Section 402(a) (5)). There are certain exemptions relating to agricultural cooperatives, and specifically named commodities (Section 402(b), *supra,* p. 4), and there is a "clarifying" provision (*ibid*) which states that Part IV shall not be construed to apply to shippers or shippers' associations pooling freight on a nonprofit basis, or to warehousemen whose services and responsibilities to shippers are confined to the terminal area in which the services are performed.

The order of the Interstate Commerce Commission which the court below has set aside required appellee Pacific Coast Wholesalers' Association to discontinue certain freight operations found to

constitute freight forwarding under Part IV of the Interstate Commerce Act, and thus to be unlawful in the absence of a permit from the Commission. Although the court below explicitly accepted the Commission's findings of fact, it rejected the conclusion that the Association has been acting as a freight forwarder on the grounds (1) that the revenue derived by the Association from the freight operations in question does not, as a matter of law, constitute profit to the Association within the meaning of Section 402(c), and (2) that the Association has not, as a matter of law, held itself out to the general public to provide transportation of property for compensation within the meaning of Section 402(a) (5). It is conceded that in all other respects the activities of the Association here involved constitute freight forwarding subject to regulation.

I

The Pacific Coast Wholesales' Association Operates on a Profit Basis in Providing, for the Suppliers of Its Members, Transportation of Goods Which Are Sold by the Suppliers on an F.O.B. Destination or Delivered Price Basis

Section 402(c) of the Act (49 U. S. C. 1002(c)) provides:

> The provisions of this part shall not be construed to apply (1) *to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the*

> *benefits of carload, truckload, or other volume rates,* or (2) to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed. [Emphasis supplied.]

The court below concluded that the appellee Association is exempted from regulation as a freight forwarder under the italicized portion of the above provision. To reach that result the court had to conclude, and did conclude, that the Association acts on a "nonprofit basis" in carrying freight for the suppliers of its members at rates yielding a substantial net return (Concl. 4, R. 60).

In making this finding the court seems to have misconceived the nature of an f.o.b. *destination* or delivered price transaction. In such a transaction, by definition, the seller, not the buyer, pays the freight, whereas in an f.o.b. *origin* sale, the freight charge is borne by the buyer. See 2 *Williston on Sales* (Rev. ed. 1948) § 280b. The Commission specifically found that the transactions here in question were "f.o.b. destination" or "delivered-price" (R. 35-36) and premised its decision on that fact: [11]

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[11] This Court has repeatedly recognized that this is the correct interpretation of an f.o.b. destination contract. *Southern Pacific Co.* v. *Darnell-Taenzer Lbr. Co.*, 245 U.S. 531; *Louisville & N. R. R.* v. *Sloss-Sheffield Steel and Iron Co.*, 269 U.S. 217, 235.

> Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember-consignors, the association is operating for hire and therefore for profit. [R. 32.]

At one point in its opinion, the court below conceded that " 'where goods are f.o.b. destination, it is ordinarily the seller who bears the freight' " (R. 55), and it explicitly accepted the Commission's findings of fact as supported by substantial evidence (R. 54). Yet the opinion quite clearly proceeds on the assumption, contrary to the fact, that the transportation costs here are borne by the *member-consignees.* The court states that "the purpose and the result of the transaction is not to benefit the shipper, but to reduce transportation costs *to the member* through savings effected in cooperation with other members * * *" (emphasis supplied) (R. 56). As a consequence of this initial error the court never came to grips with the legal issue presented, namely, whether forwarding operations of the Association which are initially conducted on a profit basis are somehow rendered "nonprofit" merely because the revenue derived from them is passed on to the consignees of the freight. The court therefore failed to analyze the Commission's reasons for its decision.[12]

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[12] The court concluded that the Association acts as agent for its members in handling freight of their suppliers, and that consequently there "is no profit to the association" (R. 56). On the court's assumption that the members pay

The Commission considered the word "non-profit" in its statutory setting. It noted that the concept of operations on a profit basis is placed in contradistinction to the operations of shippers' associations in pooling freight to obtain for their members the benefit of volume rates—*i.e.*, a freight saving. The Commission said:

> The meaning of the word "profit" varies with its context. Broadly stated, it is the excess of what is obtained over the cost of obtaining it. In the sense that they result in savings to its members, all of the association's operations are for profit. * * * But section 402(c) (1) specifically sanctions an association's obtaining for its members "the benefits [savings] of carload * * * rates"; and if the association's operations were confined to obtaining for its members the benefits of carload rates on their own freight, such operations would appear to be excluded from the concept of profit as the word "non-profit" is used in that section. [R. 32.]

Consistent with this position the Commission held that in the case of f.o.b. *origin* shipments the Association's revenue could truly be deemed freight savings to the member-consignees since they bear the freight costs (R. 12-22). But as to the f.o.b.

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the freight, this fact would show that the revenue of the Association is passed on as freight savings to the members. But, since the members do not pay the freight, it is evident that the money received by them cannot by any stretch of imagination be thought to constitute freight savings.

destination shipments involved in this appeal the Commission found, and we submit that it had no alternative but to find, that the net revenue of the Association is nothing more nor less than profit from forwarding the freight of others.

The crucial question is whether the consolidation activities of the Association have the purpose and effect of saving freight costs for the Association's members or the purpose and effect of making a profit on providing transportation of suppliers' freight. If the reductions in freight charges resulting from the activities of the Association redounded to the benefit of the persons who have to pay such charges, there would be a true freight "saving"; but when these sums go into the pockets of persons who in substance are sellers rather than buyers of the transportation in question, and who would not in any case have to pay freight charges, they can be regarded only as profits. Since that is the case here, it makes no difference whether the Association retains the profits from its forwarding business or passes them on to its members. Profits are profits whether retained in a business or paid out to its owners.

Appellees would presumably concede that if the Association made a practice of providing, at its present rates,[13] transportation of goods which were

[13] It is of course clear that if the Association performed its services at cost, thus passing on a freight saving to the supplier-consignors, its operations would be on a nonprofit basis. In a similar case involving f.o.b. origin sales where a

not consigned to or from its members or their customers, the Association would be a freight forwarder even if it passed on its profits to its members. Under such circumstances the Association's members would not be "shippers", and the Association would clearly be operating on a profit basis. That the Association's customers are in fact its members' suppliers and that the members, rather than the Association, solicit the business, are no doubt highly important as furnishing an inducement to the suppliers to patronize the Association as a courtesy to the members. But these facts are quite irrelevant to the question whether the Association is operating on a profit basis.[14]

Not only is the Commission's construction consonant with the plain language of Section 402(c) as has been demonstrated above, but it is a proper implementation of the Commission's function of administering the Act (Section 403(a), *supra*, p. 5) in the manner best calculated to carry out the National Transportation Policy "to provide for fair and impartial regulation of all modes of

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producers' association consolidated freight for its customers and collected from them *less* than its actual costs, the association was found by the Commission not to be acting as a freight forwarder. *The Barre Granite Association, Inc., Freight Forwarder Application* (No. FF-193, decided November 3, 1949). *Cf. Interstate Commerce Commission* v. *Jamestown Sterling Corp.*, 64 F. Supp. 121, 123 (W.D. N.Y.).

[14] Nor, in the present case, can the members be regarded as "shippers". In the normal commercial sense, and as used in Section 402(c) of the Act, the term can refer only to the persons who consign the goods or the persons who bear the freight costs. The members do neither here.

transportation subject to the provisions" of the Act (Preamble). Cf. *A. W. Stickle & Co.* v. *Interstate Commerce Commission,* 128 F. 2d 155, 159 (C. A. 10). The effect of the construction of Section 402(c) sought by the appellees would be to carve an exemption from the category of freight forwarders which would seriously weaken the scheme of regulation embodied in Part IV of the Act. For the ordinary freight forwarder must submit to the burdens of regulation, cannot give rebates on its published rates, and would be required to obtain the Commission's permission to be owned by shippers who use freight forwarders (Section 411, 49 U.S.C. 1011). For it to compete with an association which is not subject to regulation and which has virtually a captive clientele in the suppliers of its members is, to say the least, difficult.

The appellees' interpretation of Section 402(c) finds no support in the legislative history. Section 402(c) was introduced by the House Committee on Interstate and Foreign Commerce into the bill (S. 210, 77th Cong., 1st Sess.) which became Part IV of the Interstate Commerce Act. It was intended as "a clarifying provision rather than an exemption" from the definition of freight forwarder embodied in Section 402(a) (5) (H. Rep. No. 1172, 77th Cong., 1st Sess., p. 7).[15] It was designed

[15] The statutory language "shall not be construed to apply" in Section 402(c) also clearly shows that Section 402(c) was intended as a rule of construction and not an exemption. When a true exemption was created (Section 402(b), *supra,*

to assure that shippers pooling their freight directly or through an association would not be classified as forwarders, but there is no indication that it was intended, contrary to its language, to apply to the activities of shippers, or an association of shippers, in carrying freight for others at a profit.[16]

For the reasons above stated it is apparent that the Commission's determination in the instant case that appellee Association has been operating on a profit basis was a reasonable construction of the statute. It is settled law that the Commission's interpretations of the Act which it administers are entitled to great weight, since they involve " 'con-

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p. 4) Congress carefully used the appropriate words "shall not apply" instead of "shall not be construed to apply". Cf. *Ownership of Stock in Freight Forwarders*, 265 I.C.C. 73, 75, construing the similar language of Section 411(g) (49 U.S.C. 1011).

[16] It is significant that Section 402(c) was described as relating to operations on a nonprofit basis not only in the report of the Committee which added the section to the bill (H. Rep. No. 1172, 77th Cong., 1st Sess., p. 6) but on the floor of the House by the Chairman (Congressman Lea) and the ranking minority member (Congressman Wolverton) of that Committee. Congressman Lea stated (87 Cong. Rec. 8212):

> Then in subdivision (c) of the same section, it is specifically stated that the bill does not apply to operations of shippers in consolidating or distributing freight for themselves on a nonprofit basis for the purpose of securing the benefits of carload, truckload, or other volume rates.

And Congressman Wolverton stated (87 Cong. Rec. 8217):

> As explained * * * [in the report] with respect to paragraph (c) of the same section, the regulation will not apply to the operations of a group or association of shippers in consolidating or distributing freight for the members thereof on a nonprofit basis.

temporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, 549. The language of the court in *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, although dealing with a different administrative agency, is directly apposite here. That case turned on the question whether a newsboy was an "employee" as that term was used in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U. S. C. 151 *et seq.* This Court said (pp. 130-131):

> Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *United States* v. *American Trucking Assns.*, 310 U. S. 534. But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a "member of a crew" (*South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251) or that he

> was injured "in the course of employment" (*Parker* v. *Motor Boat Sales,* 314 U. S. 244) and the Federal Communications Commission's determination that one company is under the "control" of another (*Rochester Telephone Corp.* v. *United States,* 307 U. S. 125), the Board's determination that specified persons are "employees" under this Act is to be accepted if it has "warrant in the record" and a reasonable basis in law.

And see *Levinson* v. *Spector Motor Co.,* 330 U. S. 649, 672.

The determination of the Interstate Commerce Commission that appellee Association has not been operating on a nonprofit basis most certainly had warrant in the record and "a reasonable basis in law".

II

The Association Operates as a Freight Forwarder Within the Meaning of Section 402(a) (5) of the Interstate Commerce Act

Section 402(a) (5) of the Act (49 U. S. C. 1002(a) (5)) provides:

> The term "freight forwarder" means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for

> assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act.

It is undisputed that activities of the Pacific Coast Wholesalers' Association satisfy the requirements of subdivisions (A), (B), and (C) in the above definition. The Association in the ordinary and usual course of its undertaking provides for assembling and consolidating shipments in Chicago and for break-bulk and distributing operations in the destination areas in the West (R. 15-18, 34). It assumes responsibility for the transportation of such property from point of receipt to point of destination, and it utilizes the services of rail and motor carriers subject to Parts I and II of the Act (R. 35). There is, however, a dispute as to whether in providing such services the Association "holds itself out to the general public."

The Commission found as a fact that

> the association serves 38 wholesalers, principally of hardware and automotive supplies, located at the principal cities in Pacific coast and intermountain territory. As will be seen

> from the tonnage figures set forth above, in serving the wholesalers and their eastern suppliers, it handles a substantial transcontinental movement of these commodities.
>
> It is insisted * * * that the association does not serve the general public. The association serves not only its 38 members but also that part of the public from which those members purchase their supplies. * * * In our opinion the facts stated warrant the conclusion that the association's service is held out to and performed for the general public. [R. 34-35.]

The Commission has consistently followed this principle. Thus in *Toussaint Contract Carrier Application*, 41 M.C.C. 459, one who transported goods to the customers of two manufacturers, freight paid by consignees, was held to be a common carrier.[17] And in *Phillips Packing Co., Inc., Common Carrier Application*, 260 I.C.C. 297, transportation of goods by a seller to his customers was held to make the seller a common carrier as to f.o.b. factory sales. As Mr. Justice Holmes, speaking for the Court in *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 255, succinctly stated: "The public does not mean everybody all the time." In that case, as here, service was not offered to or utilized by the entire public. A taxi company which furnished cabs at hotels under contracts limiting the services

[17] "Common carrier" as defined in the Motor Carrier Act, Section 203(a), 49 U.S.C. 303(a), includes the same requirement of holding out to the general public embodied in the freight forwarder definition.

to hotel guests only was determined to be providing conveyance for "public use," and therefore to be a common carrier within the terms of a regulatory statute.[18]

Without challenging the above principles, the court below in effect took the position that the activities of the Association are entirely on behalf of its members, and that it does not serve the suppliers of its members. The court found an agency relationship between the Association and its members which made all acts of the Association the acts of its members (R. 55-56).

At the outset it must be observed that there is no supporting finding by the Commission of an agency relationship between the incorporated Association and its members. But assuming that such a relationship might be inferred from the Commission's findings, that relationship would in no way be dispositive of the question whether the Association serves the members' suppliers. This Court held in *United States* v. *Brooklyn Terminal*, 249 U. S. 296, 306-307, that "a common carrier does not cease to

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[18] Accord: *Bowles* v. *Wieter*, 65 F. Supp. 359 (E.D. Ill.) (trucker who picked up milk from farmers only for delivery to certain dairies held common carrier); *Interstate Commerce Commission* v. *Pickard*, 42 F. Supp. 351 (W.D. N.Y.) (trucker who carried the furniture of a single manufacturer held common carrier). Compare: *Re Hirons*, P.U.R. 1929 C. 279; *In Re Pacific Motor Transport Co.*, 38 Calif. R.C.R. 874; *Bennetts* v. *Carpenter*, 111 Colo. 63, 137 P. 2d 780; *Cleveland, Columbus & Cincinnati Highway, Inc.* v. *Public Utilities Commission*, 144 Ohio St. 557, 60 N.E. 2d 166; *Rural Electric Co.* v. *State Board of Equalization*, 57 Wyo. 451, 120 P. 2d 741.

be such merely because the services which it renders to the public are performed as agent for another." Similarly one may act as a freight forwarder for oneself or as agent for someone else.[19]

Agency would be relevant to the present issue only if the act of holding out to provide transportation somehow had a different legal consequence if performed by the members rather than by the Association. But such is not the case. The test of whether the holding out is to the general public is whether a substantial segment of the public is involved. *Terminal Taxicab Co. v. District of Columbia, supra.* Here there has been a freight movement of over 38,000,000 pounds a year from numerous suppliers. Whether it is the Association or its members who are offering to provide transportation, an appreciable part of the forwarding public is served.

The contention that the Association provides transportation for its members rather than their suppliers is simply contrary to the facts of record and found by the Commission. By an f.o.b. destination contract a seller undertakes to deliver the goods to their destination without cost to the buyer. Obviously one who provides transportation of those goods is serving the seller even though he may hap-

[19] If the Association acts as an agent of its members, it does so not in shipping goods for them, but in the conduct of the separate and profitable business of providing freight forwarding services for the suppliers of the members.

pen to be affiliated with the buyer, and the buyer may, as here, make a profit on the transaction (Point I, *supra*). And, as the Commission pointed out, it is the consignor who is injured if there is an overcharge, and who is entitled to sue for reparations (R. 30-31). *Southern Pacific Co.* v. *Darnell-Taenzer Lbr. Co.*, 245 U. S. 531; *Louisville and N. R. R.* v. *Sloss-Sheffield Steel and Iron Co.*, 269 U. S. 217. Moreover, ownership is normally in the consignor, and it is he who usually bears the risk in an f.o.b. destination transaction. See 2 *Williston on Sales* (Rev. Ed. 1948) § 280b.

The pattern of operation here is clear. The Association stands ready, willing and able to provide transportation for any and all suppliers of its members east of Chicago. The members solicit the business, and in most cases the suppliers consent to make use of the Association's facilities. The result is a forwarding business of substantial magnitude. By the test laid down in *Terminal Taxicab Co.* v. *District of Columbia, supra,* it is evident that there has been a holding out to the general public.

The construction of "holding out" here adopted by the Commission was a reasonable one supported by authority. Under the rule (discussed *supra,* pp. 24-26) of *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, and *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, that reasonable construction should not have been disturbed.

III

The Freight Forwarding Operations of the Association Are Illegal

Section 410(a) of the Act (*supra*, p. 5) explicitly forbids any person to engage in "service subject to this part [IV]" without a permit from the Commission. And Section 402(a) defines the quoted term as:

> any or all of the service in connection with the transportation in interstate commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the authority of this part to perform or provide;

As has been demonstrated in Points I and II, *supra*, the Association has undertaken to perform services as a freight forwarder in commerce, it is not exempt from the regulatory provisions of the Act, and it has never sought a permit from the Commission to operate as a freight forwarder (R. 15). It therefore follows that the Association has been violating the law and that the Commission properly directed it, and the other appellees to the extent that they are parties to its unlawful activities, to discontinue freight forwarding operations. By the same token it is clear that the decree of the court below setting aside the Commission's order cannot be sustained.

CONCLUSION

For the foregoing reasons the decree of the court below should be reversed with directions that the complaint be dismissed.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

HERBERT A. BERGSON,
Assistant Attorney General.

J. ROGER WOLLENBERG,
Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

DECEMBER 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 867800 949

SUPREME COURT, U S

Office - Supreme Court, U. S.
FILED
DEC 28 1949
CHARLES ELMORE CROPLEY
CLERK

BEFORE THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 114*

FREIGHT FORWARDERS INSTITUTE, *Appellant*,

v.

PACIFIC COAST WHOLESALERS' ASSOCIATION, ET AL., *Appellee*.

BRIEF ON BEHALF OF FREIGHT FORWARDERS INSTITUTE.

HARRY C. AMES,
Attorney for Appellant.

* The proceeding also embraces No. 113, *United States et al.* v. *Same*.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF ON BEHALF OF FREIGHT FORWARDERS INSTITUTE.

OPINION BELOW.

This appeal is from the decision in *Pacific Coast Wholesalers' Asso.* v. *United States*, 81 Fed. Supp. 991.

JURISDICTION.

The final decree of the three-judge district court was entered on February 18, 1949 (R. 62). Petition for appeal was presented and allowed on April 12, 1949 (R. 63). The jurisdiction of this court is conferred by the Judicial Code, as revised by the act approved June 25, 1948, effective September 1, 1948, Title 28 U. S. Code §§1253 and 2101(b),

consolidating and continuing the substance of prior provisions of law relating to direct appeals from decisions of three-judge courts in suits to set aside orders of the Interstate Commerce Commission. This court entered its order noting probable jurisdiction on October 10, 1949 (R. 772).

QUESTIONS PRESENTED.

1. Whether the Interstate Commerce Commission (hereinafter called the Commission) erred in concluding that the respondent association was not operating "on a nonprofit basis" in handling shipments sold to its members "f.o.b. destination" and making refunds to its members of portions of the freight charges paid on such shipments.

2. Whether the Commission erred in concluding that as to such shipments the respondent association was serving the nonmember consignors and hence the general public within the meaning of the law.

3. Whether there was a rational basis for the decision of the Commission.

4. Whether the court below erred in turning its entire decision on the agency relation existing between the respondent association and its members.

STATUTES INVOLVED.

The statutes involved are sections 402(a)(5); 402(b); 402(c)(1) and (2); and 410(a) of the Interstate Commerce Act and the National Transportation Policy. The pertinent provisions are set forth in the appendix.

STATEMENT.

In 1934, seven receivers of automotive supplies, located in California, met for the purpose of "Organizing a Freight Forwarding Association." Their goal was to bring the receipts of the group up to a minimum of 300,000

pounds per month (R. 90—Exhibit 2). This was long prior to the Federal regulation of the freight forwarding industry, which came in May, 1942.

From the time of its inception the original group continued to grow and expand. From an original membership of seven receivers of a single commodity description—automotive supplies--with receipts of 300,000 pounds per month (3,600,000 pounds per annum) it has grown to a group of some 38 receivers of a widely diversified list of commodities[1] in 7 western States, handling a total tonnage (in 1944) of 42,018,232 pounds (R. 17). It is significant that the growth and development of the organization, both memberwise and tonnagewise, suddenly gained tremendous impetus coincident with the regulation of the freight forwarding industry in 1942. For example, there were 18 members in 1939 and 38 in 1944. The total tonnage handled jumped from 19,650,654 pounds in 1942 to 44,070,867 in 1943, the first year of the forwarder regulation (R. 17). This, in itself, suggests a profit motive seeking competitive advantage through an apparent loophole in the law against a foe whose hands were tied.

It is not questioned that the physical operations of the association, i.e., the assembly of small shipments into carload lots for movement to break-bulk points for distribution, are exactly the same as those of the regulated freight forwarder; that the published charges of the latter are assessed in the first instance against the consignee members or the consignor-nonmembers of the association; that every pound of freight handled through the association is freight which can and might otherwise be handled by the regulated forwarders; and that refunds, ranging up to 45 cents per 100 pounds, are later made to the consignee members on

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[1] Including, in addition to automotive supplies, those received by shipbuilding companies; hardware jobbers; mine and smelter supply companies; marine supply companies; bridge and dredging companies; and engineering companies.

basis of the tonnage handled through the association (R. 16, 17-383).

Similarly, there is no question that the regulated freight forwarder must publish, collect, and *retain* its tariff charge and that it cannot, in the nature of things, compete for the traffic against the refunds made by the association.

The Association has escaped regulation, and with it the duty to publish, collect, and retain *its* charges, by claiming exemption under par. (c)(1) of section 402 of the act.

THE PROCEEDINGS BEFORE THE COMMISSION.

Faced with this intolerable competitive situation the regulated forwarders, through their institute, appellant herein, petitioned the Commission to investigate the status of the association, which request was granted. In its first decision the Commission (Division 4) found in effect that the assocation and its activities fell within the sweep of the exemption in section 402(c)(1), and discontinued the proceeding (R. 22) (*Pacific Coast Wholesalers' Assn.—Investigation of Status*, 264 I. C. C. 134). The Institute thereupon petitioned for reconsideration and argument before the entire Commission.

On such petition the Commission (Division 4) reopened the proceeding and assigned it for further hearings. At such further hearings it developed that the freight charges on a substantial portion of the shipments, on which the association made refunds, were either fully prepaid at point of origin by the consignor, or that the consignee, who physically paid the charges in the first instance, was allowed to deduct them, as such, from his invoice (R. 23 et seq.). As to such shipments the Commission found that:

> Simple logic would dictate the conclusion that in handling shipments on which freight is borne by nonmember consignors, the association is operating for hire and therefore for profit (R. 32).

Upon such finding the Commission concluded:

(1) That the association's service in connection with shipments from nonmember consignors to member consignees and their customers of goods sold on a f.o.b. destination or delivered-price basis is not a service for the association's members and is not performed on a nonprofit basis within the meaning of section 402(c)(1) of the act.

(2) That the operations of the association as described in finding 1 are those of a freight forwarder in interstate commerce within the meaning of section 402 (a)(5) of the act, and that continuance thereof without a permit is in violation of section 410(a) of the act and therefore unlawful (R. 35, 36).

(3) That respondent Elmer J. Jensen, Jules H. Ernst, (since deceased), Percy T. Lyon, Ira C. Lambert, L. A. Lindroth, G. A. Olson, and Sol Smith, to the extent that they are parties to such unlawful operations, are likewise in violation of section 410(a) of the act.

The respondent association, and its officers, were admonished to discontinue the service and to notify the Commission of such discontinuance on or before March 19, 1948 (R. 36).

THE PROCEEDINGS BEFORE THE STATUTORY COURT.

After appropriate steps were taken to exhaust administrative remedies, complaint was filed in a three-judge court for the Southern District of California—Central Division—asking that the decision of the Commission be set aside and that it be enjoined from requiring respondent association or its officers to abstain from continuing to handle for and make refunds to its membership on shipments sold f.o.b. destination. In an opinion dated January 24, 1949, the lower court held:

The conclusions and requirements of the Commission predicated upon the report of December 18, 1947, have no rational basis, and must be set aside (R. 56).

SUMMARY OF ARGUMENT.

1. We stand squarely on the proposition that any operations of shippers or groups or associations of shippers which, simulating the functions of regulated freight forwarders, are operated on a profit basis are not within the scope of section 402(c)(1). We submit that it is sheer sophistry to argue that the receipt of "refunds" out of charges which are not paid by the recipients of such refunds, does not constitute a profit. In 50 C. J. 642 et seq., profit is defined as gain; (*Thorn* v. *De Bretuil*, 83 N. Y. S. 849) which might be the gain made in a business transaction (*Vidal* v. *South American Securities Co.*, 276 Fed. 655) or any acquisition beyond expenditure; (*Webster Int. D.* v. *Van Hoose*, 30 S. E. 783, 786); (*Mitchell* v. *Chicago etc., R. Co.*, 114 N. W. 622, 625); (*Carter* v. *Arnold*, 35 S. W. 584); (*Vital* v. *South American Securities Co., supra.*,) or a pecuniary gain in any transaction; (*Webster Int. D.* v. *Van Hoose, supra*); (*Mitchell* v. *Chicago etc. R. Co., supra*). In short, the term "profit" is broad enough to cover any sort of advantage, advance or gain, and benefit of any kind (*Simcooke* v. *Sayre*, 148 Iowa 132; 126 N. W. 816, 817).

The mechanics by virtue of which these refunds are fed back to the members by the general manager of the association—Olson—show, in themselves, the existence of a profit motive. As shown, the refunds consist of the balance, or difference between the freight charge based in the first instance on the published rates of the regulated forwarder, on the one hand, and the cost to the association—functioning through Olson—of (a) getting the individual shipments to the concentration point, Chicago, (b) moving the consolidated shipments in *carload* lots to the break-bulk points on the West Coast (and at Salt Lake City, Utah,

Phoenix, Ariz., and Yakima and Spokane, Wash.), (c) their distribution thence either to the consignee members, or, in some cases, directly to the customers of the latter, plus (d) Olson's commissions and certain other assessments, on the other hand (R. 12 et seq—23 et seq).

When shipments are consigned to the members with freight charges "collect"[2] the mechanics are relatively simple. The association pays the freight charges for its members and after deducting the above expenses for transportation, commissions, etc., refunds the balance. Similarly, when shipments are consigned to members on a "freight allowed"[3] basis the matter is not too complicated. In both types of shipment the money out of which the underlying carriers are paid passes in the first instance through the hands of the association. It is on the "prepaid" shipments that the association must really assert itself to get into a position to make a refund. In ordinary circumstances, as the term "prepaid" implies, the consignor-seller would prepay the full charge to the initial carrier and the association, not handling the money would have no funds out of which to refund. But the transactions are not allowed to proceed in the ordinary way. The consignor-seller is on the "credit" list of the receiving carrier, as well as that of the association. He is given written instructions to bill the shipments to the association at Chicago, with the ultimate consignee designated on the lower left hand corner of the bill of lading. He pays no money to the carrier. On the contrary, the association "advances" not only the charges to Chicago, but those to the West

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[2] The "cease and desist" requirement of the Commission does not run to this type of transaction (R. 36).

[3] Which means that while the freight charges are *physically* paid at destination by or on behalf of the member, he is allowed to deduct them, *as such*, from the face amount of his purchase invoice. This type of transaction is illustrated in *Louisville & N. R. Co.* v. *Sloss-Sheffield Steel & Iron Co.*, 269 U. S. 217, 235, 237, 238.

Coast as well, and then bills the consignor-seller for the full charge of the regulated forwarder even to the extent of adding the 3 per cent transportation tax. If by any chance, the charges *to* Chicago have been actually prepaid by the seller they are deducted from the association's bill for the *full* charge (R. 26, 27). Thus the association having received from the consignor the *full* charges and having paid out a smaller sum to the underlying carriers, is in position to divide the difference or profit with the consignee-member who has never paid out a cent. To use the language of Mr. Olson at the further hearing:

> The so-called "prepaid shipments" are treated no differently by us than those on which charges are collected. We treat them all alike. They are all thrown in the hopper and the money comes rolling out (R. 604).

We repeat, it is sheer sophistry to look upon these transactions as being devoid of a profit motive, or to attempt to explain away the latter on the principle of agency.

2. We submit, also, that the Commission was correct in its conclusion that as to shipments sold "f.o.b. destination" the services rendered by the association through Olson are services for nonmembers and, hence, for the general public and that there is a holding out to render such services within the meaning of the statute (R. 35).

ARGUMENT.

THE DECISION OF THE COURT BELOW SACRIFICES SUBSTANCE FOR SHADOW.

In concluding that the "simple logic" of the Commission in finding that refunds out of charges not paid spells out an operation for profit, has "no rational basis" the lower court has turned its decision entirely upon the principle of agency. It concludes that because the "association" is the agent for its member principals, the "association" cannot be said to be operating for profit because its mem-

bers, not it, receive the refunds.[4] This is not only a decided oversimplification of the case but it ignores the very keystone of the agency relation—*qui facit per alium facit per se.*

The acts of an authorized agent with reference to the business in which he is at the time employed, and within the limits of his authority, are the acts of his principal (*State of Ohio ex rel Seney* v. *Swift & Co.*, (C. C. A. Ohio) 270 F. 141; certiorari denied, 257 U. S. 663; appeal dismissed 260 U. S. 146), the principal and agent being the same person in legal contemplation when the latter is acting within the scope of his authority (*Alex. Woldert Co.* v. *Citizens Bank, etc.*, 234 S. W. 124.)[5] And if the acts of the association, through Olson, are to be viewed as unlawful or tortious in the light of the statute, there can be no agency, as such, and all parties participating therein are principals.[6]

Moreover, the narrow view of the lower court with respect to the matter of "profit" is not in keeping with the language of the statute itself. The exemption runs only to shippers or groups or associations of shippers who pool or consolidate their shipments "on a nonprofit *basis.*" It does not identify the profit with the consignor, consignee, or the group or association, *as such.* Nor does it admit of any construction which holds that the receipt of something for nothing escapes the "profit" status simply because the details are handled by an association, as agent for the beneficiary. On the contrary, the reasonable construction points inevitably to the conclusion that the benefit of the exemption accrues only to those who through mutual acts of consolidation are able to reduce

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[4] It states specifically: "It is clear that there is no profit *to the association* from the activities described in the Commission's report" (R. 56).

[5] 2 C. J. S. 1182.

[6] 2 C. J. S. 1039, 1040.

charges which they would otherwise *pay for themselves* and would not run to those who save money on freight charges paid by others. If the ultimate result is a profit anywhere along the line the activities cannot be said to have been "on a nonprofit *basis*" and the exemption is destroyed.

The true distinction between the general freight forwarder, who handles traffic offered by the public generally, and the "shipper, or group or association of shippers" contemplated in par. (c) of section 402 is this: The former obtains his profit out of the difference between the less-than-carload rate which he charges his shipper (and which his shipper would pay without the intervention of the forwarder) and the lower carload or volume rate which he pays to the underlying carrier for the physical service of transportation, plus the costs incident to consolidation and breaking bulk. He is used by the public because his "consolidated" shipments move much more expeditiously.

The true shippers' association is a group of shippers, generally in the same line of industry,[7] who have orders for shipments of their goods in less-than-carload quantities. By pooling their shipments, they are able to pay a prorata share of the lower carload rate in lieu of the higher rate for less-than-carload shipments. Generally, their agent charges a fixed fee for the service of consolidating their shipments. In one sense these shippers "profit" in that they secure the benefit of a lower rate than they would otherwise pay. But in a broader sense they do not profit because they pay the published tariff rate for the service which they actually get. There is no prior payment of the higher rate so as to set up a difference or pool which they divide with their general manager, as they do here. In other words, they are pooling their freight "for the purpose of securing the benefits of carload, truckload, or other volume rates," an activity falling directly under the stat-

[7] Such as the paper industry, or the furniture industry.

ute. This type of activity has been going on for years; its legitimacy has never been questioned, certainly not by the orthodox forwarder, and Congress, without doubt, had no intention to disturb it or to bring it under regulation.

But, while legitimate pooling, such as that just described, has been exempted and properly so, Congress did see fit to add the qualifying words "on a nonprofit basis." The question is, then, at just what point does legitimate *non*-profit pooling become nonexempt because handled on a profit basis. Obviously, such a condition could arise in at least two ways: First, as is the situation here—the shippers could, through arrangements with their sellers, receive refunds out of charges paid or borne by the latter. As stated by the Commission, "simple logic" characterizes those transactions as of a profit motive. Secondly, and of grave importance to the regulated forwarding industry, these so-called agents could set themselves up as freight forwarders in every sense of the word and through the mere guise of incorporation secure their patrons in the form of members. We shall discuss this phase of the case in more detail later.

If, however, the decision of the lower court is to stand, the words "on a nonprofit basis" are denuded of any practical effect. In other words, if there is no profit in the types of traffic here under review it would be impossible to conceive of a situation in which an authorized forwarding operation "on a nonprofit basis" could become unauthorized because of profit.

FAILING THE NONPROFIT TEST THE ACTIVITIES OF THIS GROUP COME SQUARELY WITHIN THE DEFINITION OF A FREIGHT FORWARDER.

The statutory definition of a freight forwarder contains four separate elements. They are:

(a) There must be a holding out "to the general public to transport or provide transportation of property for compensation" (otherwise than as a carrier subject to part I, II, or III of the Act).

(b) There must be assembling and/or distributing operations with respect to the undertaking.

(c) There must be an assumption of responsibility for the transportation of such property from the point of its receipt to its ultimate destination, and

(d) There must be utilization of underlying carriers subject to part I, II, or III of the Act.

Throughout the proceeding appellee has conceded, tacitly at least, that the activities of Olson, who handles all of the details of the operation, meet elements (b), (c), and (d), as set forth above,[8] but it is now insisting that there is no "holding out to the general public" within the meaning of the definition.[9] On this phase of the case the Commission concluded:

> It is insisted in respondents' behalf that the association does not serve the general public. The association serves not only its 38 members but also *that part of the public from which those members purchase their supplies.* While the shippers thus referred to are not all the public, it is to be remembered that no man serves all of the public. *Terminal Taxicab v. District of Columbia,* 241 U. S. 252. In our opinion the facts stated warrant the conclusion that the association's service is held out to and performed for the general public (R. 35). (Emphasis ours)

In this connection the Commission referred to its decisions in *Phillips Packing Co., Inc., Common Carrier Application,* 260 I. C. C. 297, and *Toussaint Contract Carrier Application,* 41 M. C. C. 459, in both of which the carriers

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[8] As a matter of fact appellee from 1935, when motor carriers were regulated until 1942, when forwarders were regulated, published and filed with the Commission a regular tariff of its rates. It did this because it insisted that it should be entitled to have joint rates with motor carriers on the same basis as the regulated forwarder.

[9] The court below has agreed with appellee on this point (R. 56).

served only that part of the public having need therefor by reason of purchases of supplies (R. 35).

The decision below concedes, in effect, that where goods are sold "f. o. b. destination" either through the full prepayment of charges by the consignor, or by allowing the consignee who physically pays the charges to deduct them, as such, from the invoice price, the carrier is serving the consignor while the goods are in transit. This must be so from the fact that in such circumstances it is agreed that the consignor alone is entitled to reparation of any excess charges collected for the transportation. *Southern Pac. Co.* v. *Darnell-Taenzer Lbr. Co.*, 245 U. S. 531; *Louisville & N. R. Co.*, v. *Sloss-Sheffield Steel & Iron Co.*, 269 U. S. 217.[10]

But the lower court, without denying that in such circumstances the association is *serving* the nonmember-seller, strips it of all significance in the case because, in doing so, the association is acting as the agent of the consignee-member (R. 56). This we submit, is a lamentable failure to pierce the corporate veil.

The evidence, which is before the Court, shows plainly that the "association-corporation" is nothing more or less than a cloak to shield the activities of Olson in reaping all of the benefits of conducting a freight forwarding business without incurring any of the regulatory obligations incident thereto. Olson and his understudy, Sol Smith, not only met with the founders of the association initially (Exhibit 2) and have continually pressed for its expansion, but Olson has in fact directed the affairs of the association from its inception without the slightest semblance of any orders or instructions from the nominal officers of the group, even to the extent of leasing, in the name and

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[10] Compare also *United States* v. *R. P. Andrews Co.*, 207 U. S. 229, where the decision plainly infers that unless the negotiations of the parties show clearly to the contrary, "property" in goods sold "f. o. b. destination" remains in the seller and the transportation is "subject to his risk until delivery at destination."

at the expense of the association, a terminal at Chicago in which he owns a half interest. His annual compensation, based on a "commission" stated in terms per cwt., of freight handled amounts to more than $60,000. Until the heat of investigation indicated its propriety there had never been a meeting of the membership. And both the President and Executive Secretary testified that neither of them, by word or deed had ever made any suggestions to Olson as to the manner in which the business should be conducted (R. 18, 20, 21). Indeed, so far as his relations to the members is concerned, Olson might well be deemed to be an independent contractor.[11] Moreover, as we have shown, he must, in connection with these "f. o. b. destination" shipments keep in constant and intimate touch with the eastern producers in directing that their goods may be handled in such a manner that he may come into possession of the freight charges in order to make refunds.

In essence this situation is on all fours with that before the Court in *Davis* v. *People* (1926) 79 Colo. 642; 247 Pac. 801. In that case the Public Service Commission of Colorado had declined to issue to Davis a certificate of public

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[11] In 2 C. J. S. pp. 1027, 1028, the status of independent contractor is defined as follows:

> An agent and an independent contractor are not always easy to distinguish, and there is no uniform criterion by which they may be differentiated. Generally, however, the relations are distinguished by the extent of control which the employer exercises over the employee as to the manner in which he performs his work. Where the will of the employer is represented only in the result, and not in the means by which it is accomplished, and the employer retains no control over the employee as to the manner of accomplishing the desired result, the employee is an independent contractor and he, not his employer, is responsible for his own acts and contracts. And the relation is not changed by the employer's reservation of the right of supervision and approval.

convenience and necessity to operate as a common carrier by motor vehicle. Whereupon an "association" was organized consisting of some 121 members who acounted for 90 per cent of the potential traffic of the area. The corporate forms were duly observed, although the decision shows that so far as meetings and knowledge and supervision of the officers of the corporate affairs were concerned, the "association" was run about as loosely as the one in the instant case in its earlier or preinvestigation stages. Some of the statements of the learned justice are highly significant. As to the dealings with members he said (p. 802):

> Defendant (Davis) has a contract with the association binding him to haul for those only who belonged to it, but accepted shipments from *nonmembers to members* and vice versa on the order and payment of either. (Emphasis ours).

While respondent here makes no refunds to nonmembers it cannot be denied, particularly as to "prepay" and "freight allow" shipments, that it is handling shipments for account of nonmembers.

Continuing his discussion on the corporate veil, the learned justice stated (p. 802):

> Contrary to public opinion, mere schemes to evade the law, once their true character is established, are impotent for the purpose intended. *Courts sweep them aside as so much rubbish.* (Emphasis ours)

Commenting upon the possibilities inherent in such a situation, the learned justice stated (p. 802):

> Had defendant (Davis) made all save one of the shippers in that territory, or all purchasers of postage at any postoffice therein, members of the association, and claimed that such limitations converted an otherwise public into a private carrier, the contention

> would be so absurd as to be instantly rejected. But the reasons for the rejection would be the *identical reasons* which demand rejection of defendant's contention in the instant case. (a) The proportion of the public served is so large as to be the public, (b) *the limitation is a mere device to hoodwink the law.* (Emphasis ours)

(Compare also *Parlett Cooperative* v. *Tidewater Lines* (1933), 164 Md. 405; 165 Atl. 313.)

In principle the situation is analogous to that before this Court in *Chicago, M. & St. P. R. Co.* v. *Minneapolis C. & Co. Asso.*, 247 U. S. 491. In that case it appeared that the appellant trunk line railroads owned most of the stock in and exercised control over an independently incorporated switching line which latter assessed a charge in addition to the line-haul rate on shipments to and from industries on its line. The State Commission held that, despite the corporate forms, the switching line was in fact the terminal of the owning carriers and that the separate charge for switching was discriminatory as compared with the free deliveries made by the proprietary companies to industries on their own rails. In upholding the decision of the Commission this Court said at p. 498:

> With the facts thus summarized, it is difficult to conceive of a plan for the control of a jointly owned company and for the operation of a jointly owned track more complete than this one is, and it is sheer sophistry to argue that, because it is technically a separate legal entity, the Eastern Company is an independent public carrier, free in the conduct of its business from the control of the two companies which own it, and, therefore, free to impose separate carrying charges upon the public.

And at p. 501:

> In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law, but,

> regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.

If the association, through Olson, is actually *serving* the consignors there can be no question that there is a holding out to serve the general public within the meaning of the statute. The vast sweep of business done by these consignee-members, not only as to diversity of commodities handled but in territory served—7 States—makes it clear that their suppliers must, in the nature of things, gridiron the eastern territory. We believe that the Commission was eminently sound in concluding that the course of conduct of the association was of sufficient importance to spell out a general holding out. As stated in *Terminal Taxicab Co.* v. *Kutz*, 241 U. S. 252, 254:

> the important thing is what it does, not what its charter says,

and in the same case this Court refused to recognize the contention that in limiting a portion of its services to hotels and their guests the company had divested themselves of a public status. The Court said:

> We do not perceive that this limitation removes the public character of the service, or takes it out of the definition in the act. No carrier serves all the public * * *. The public does not mean everybody all the time. (See *Peck* v. *Tribune Co.*, 214 U. S. 185, 190.)

A DECISION EXEMPTING FROM REGULATION OPERATIONS OF THE CHARACTER AND SCOPE DEVELOPED IN THIS CASE COULD THWART THE ENTIRE SCHEME OF REGULATION.

In placing freight forwarders under regulation Congress must have felt that their services were endowed with a public interest. Additionally, it made forwarders subject to the protection of the national transportation policy which, among other things, calls for the elimination of "de-

structive competitive practices" and the promotion of "sound economic conditions" for "all modes of transportation." If through the mere formal act of incorporation, a segment of the traffic consist of the breadth and diversity here encountered may escape the burdens and expense incident to regulation and, in addition, make substantial cash refunds to its patrons, there is no question that the regulated forwarder is doomed, at least as to this particular section of the country. Further, it is not to be assumed that, given judicial approval, the development will end here. Imitators are waiting for the "green light," and it may confidently be expected that appellee's organization will be greatly expanded, through a simple amendment of its by-laws.

We appreciate that par. (c) of section 402 does not *in terms* limit either the number of members in any "group or association" or the character of the commodities to be pooled or consolidated. But a brief review of the legislative history of the paragraph will shed considerable light on the bona fides of the association and the type of organization which Congress intended to exempt.

Part IV of the Act, as finally enacted, is a composite of S. 210, introduced by Senator Reed of the Senate Committee on Interstate Commerce on January 8, 1941; the House Committee substitute for that Bill; and H. R. 3684, introduced on February 28, 1941, by Chairman Lea of the House Committee on Interstate Commerce. Section 402(c), the crucial section in this controversy, did not appear in any of the original drafts. Its inclusion in the final draft was based upon representations of various associations which had been consolidating freight for their members for years and which feared that the definition of a freight forwarder carried in the original draft of H. R. 3684 might possibly be held to cover their operations. Hereunder we set forth a composite of the original definition in H. R. 3684 and the definition as amended following the public hearings. The additions are in italics; the deletions are underscored.

Par. (c) of section 402 was added to the Bill as a clarification.[12]

(e) The term 'freight forwarder' means any person which undertakes (otherwise than as a carrier subject to Part I, II, or III of this Act) *holds itself out to the general public* to transport *or provide transportation of* property *or any class or classes of property,* for compensation, in interstate or foreign commerce and which in the ordinary and usual course of performing or discharging any such *its* undertaking (1) *(A)* assembles and consolidates *or provides for assembling and consolidating* shipments of such property and performs *or provides for the performance of* break bulk and distributing operations with respect to such *consolidated* shipments, (2) *(B)* moves such property under a through rate or charge from point of collection, to point of destination *assumes responsibility for the transportation of such property from point of receipt to point of destination* and (3) *(C)* utilizes or employs *for the whole or any part of the transportation of such shipments* the instrumentalities or services of a carrier or carriers subject to Part I, II or III of this Act, or a combination of such instrumentalities or services.

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[12] In a "Memorandum Relating to Differences Between S. 210 as passed by the Senate and the House" by A. H. Perley, House office of Legislative Counsel, this explanation appears:

Section 402(c) of the House substitute contains provisions which are more in the nature of clarifying provisions rather than exemptions. This subsection was included as a supplement to the definition of "freight forwarders" in order to make sure that the bill will not be construed to bring under regulation shippers, groups of shippers or nonprofit associations of shippers, consolidating or distributing freight for themselves or other members, or to cover warehousemen, pool-car operators, and other shippers' agents engaged in consolidating or distributing pool cars and not assuming responsibility for the through movement of the property.

The transcript of the public hearings on H. R. 3684 (March, 1941) which is the only source of detailed information on the subject shows that these associations are invariably operated in connection with a single commodity or the products of a specific industry.[13] It is worthy of note that appellee herein did not appear to protect its interests.

The Committee members recognized the danger inherent in this matter of exemption. At (Tr. 322) Representative Kennedy stated to one of the witnesses seeking exemption:

> Well, that may be so, but as I view it we are likely to have so many exceptions that the first thing you know we will have exempted so many that there will be practically none, if any, included under this proposed law. Everybody seems to want a favored position, and if they were all granted special treatment we would not have any uniform system of regulations or control.

It is unfortunate, of course, from the standpoint of the regulated forwarding industry, that Congress did not see fit to include in par.(c) of section 402, some language which would spell out more definitely its intention to limit exempt pooling to single commodities or at least to related products of specific industries. But its failure to do so should not be deemed as in disagreement with those who proposed

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[13] E. g. the Aircraft Traffic Asso., dealing with materials for aircraft production (Tr. p. 193); Westfield Paper Company—paper products (Tr. p. 296); Kalamazoo (Mich.) Paper Producers—paper products (Tr. p. 300); Wisconsin Paper Group—paper products (Tr. p. 301); Chicago Traffic Bureau—food products (Tr. p. 382); Furniture Mfrs. Asso.—furniture (Tr. p. 383); Chicago Furniture Mfrs. Asso.—furniture (Tr. p. 387); Miami Valley Paper Shippers Asso.—paper products (Tr. p. 390); Furniture Mfrs. Asso., Grand Rapids, Mich. (Tr. p. 461); New England Paper Service Asso.—paper products (Tr. p. 498); Hickory (N. C.) Chair Mfg. Co.—furniture (Tr. p. 502); Security Warehouse Company, High Point, N. C.—furniture (Tr. p. 513); National Retail Furniture Association—furniture (Tr. p. 515).

such limited exemption. It might more properly be ascribed to the difficulties of draftsmanship attendant upon any attempt to particularize. It cannot fairly be assumed that Congress intended an exemption to be broader than that requested.

This lack of particularization on the part of Congress no doubt influenced the Commission in its first decision in concluding that appellee's operations came within the preview of the exemption, a conclusion to which the Commission now adheres in respect of shipments sold on an "f.o.b. origin" basis. When that decision was rendered the record did not distinguish between such shipments and those sold on an "f.o.b. destination" basis. We submit, therefore, that the Commission is eminently sound in holding that the latter class of shipments are beyond the pale of exemption.

CONCLUSION.

It is entirely irrational to suppose that Congress in one breath would put the freight forwarder under complete regulation and under the protection of the national transportation policy, and in the next breath free from regulation a type of operation which sets up an impossible species of competition with respect to every item of traffic which the regulated forwarder might handle. As stated in *McDonald* v. *Thompson*, 305 U. S. 265, 266:

> As the Act (Part II, Interstate Commerce Act) is remedial and is to be construed liberally, the proviso defining exemptions is to be read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms. (Parentheses added)

The decision of the Commission on further hearing is in complete accord with that principle and should be allowed to stand.

Respectfully submitted,

HARRY C. AMES,
Attorney for Appellant.

APPENDIX.

Excerpts from Transportation Act 1940, as Amended May, 1942.

Section 402(a) (5): The term "freight forwarder" means any person which (otherwise than as a carrier subject to Part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to Part I, II, or III of this Act.

* * * * * *

Section 402(b). The provisions of this part shall not apply (1) to service performed by or under the direction of a cooperative association, as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, or (2) where the property with respect to which service is performed consists of ordinary livestock, fish (including shellfish), agricultural commodities (not including manufactured products thereof), or used household goods, if the person performing such service engages in service subject to this part with respect to not more than one of the classifications of property above specified.

* * * * * *

Section 402 (c). The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, or (2) to the operations of a warehouseman or other shippers'

agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed.

* * * * * *

Section 410(a). No person shall engage in service subject to this part unless such person holds a permit, issued by the Commission, authorizing such service; * * *

* * * * * *

NATIONAL TRANSPORTATION POLICY

[*Added September 18, 1940.*][*U. S. Code, title 49, notes preceding secs. 1, 301, 901, and 1001.*] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

Nos. 113, 114.

113 114

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

PACIFIC COAST WHOLESALERS' ASSOCIATION, *et al.*,

Appellees.

On Appeal From the United States District Court for the Southern District of California.

Brief on Behalf of Appellees: Pacific Coast Wholesalers' Association and Elmer J. Jensen, Percy T. Lyon, Ira C. Lambert, G. A. Olson and Sol Smith.

HUGH GORDON,
WYMAN C. KNAPP,
612 Citizens National Bank Building, Los Angeles 13,
Attorneys for Appellees.

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OPINION BELOW.

The opinion of the District Court for the Southern District of California [R. 49] is reported in 81 Fed. Supp. 991. The reports of the Interstate Commerce Commissions [R. 12, 23] appear in 264 I. C. C. 134 and 269 I. C. C. 504.

JURISDICTION.

The final decree of the three-judge District Court was entered on February 18, 1949 [R. 61]. The petition for appeal was presented and allowed on April 12, 1949 [R. 63, 66]. The jurisdiction of this Court is conferred by 28 U. S. C. 1253, 2101(b), and 2325. Probable jurisdiction was noted on October 10, 1949 [R. 772].

QUESTIONS PRESENTED.

As stated by the court below:

> "So the precise question here is whether the facts found by the Commission show respondent (appellee) Pacific Coast Wholesalers' Association to be a 'freight forwarder' within the meaning of Section 402 of the Interstate Commerce Act (49 U. S. C., Section 1002)." [R. 54.]

It was held by the court below that "the conclusions and requirements of the Interstate Commerce Commission predicated upon the Report of December 18, 1947 [269 I. C. C. 504] have no rational basis and must be set aside." [R. 56.]

Accordingly, the following questions are now presented on this appeal.

1. Whether the Commission's findings of fact support the conclusion that: "The Association's service in connection with shipments from non-member-consignors to member-consignees and their customers, of goods sold on a f.o.b.-destination or delivered price basis is not a service to the Association's members." [R. 35.]

2. Whether the Commission's findings support the conclusion that "the Association's service in connection with shipments from non-member-consignors to member-consignees and their customers of goods sold on a f.o.b.-destination or delivered price basis * * * is not performed on a non-profit basis within the meaning of Section 402(c)(1) of the Act." [R. 36.]

3. Whether the Commission's findings support the conclusion that the Association holds itself out to the general public to transport or provide transportation of property for compensation, within the meaning of Section 402(a)(5) of the Interstate Commerce Act.

STATUTE INVOLVED.

Section 402 of Part IV of the Interstate Commerce Act, 56 Stat. 284, 284, 49 U. S. C. 1002 provides in part:

(a) For the purposes of this part—

* * * * * * * *

(5) The term "freight forwarder" means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the Transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act.

* * * * * * * *

(7) The term "service subject to this part" means any or all of the service in connection with the transportation in interstate commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the authority of this part to perform or provide;

* * * * * * * *

(b) The provisions of this part shall not apply (1) to service performed by or under the direction of a cooperative association, as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, or (2) where the property with respect to which service is performed consists of ordinary livestock, fish (including shellfish), agricultural commodities (not including Manufactured products thereof), or used household goods, if the person performing such service engages in service subject to this part with respect to not more than one of the classifications of property above specified.

(c) The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, or (2) to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed.

Section 403, 49 U. S. C. 1003, provides in part:

(a) It shall be the duty of the Commission to administer the provisions of this part, and to that end it shall have the authority to make and amend such rules and regulations and to issue such orders as may be necessary to carry out its provisions.

* * * * * * * *

(f) The Commission may investigate, either upon complaint or upon its own initiative, whether any freight forwarder has failed to comply with any provision of this part or with any order, rule, regulation, or requirement issued or established pursuant thereto, and, after notice and hearing, take appropriate action to compel compliance therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for action on its part, it may dismiss such complaint.

Section 410, 49 U. S. C. 1010, provides in part:

(a) No person shall engage in service subject to this part unless such person holds a permit, issued by the Commission, authorizing such services; * * *

STATEMENT OF THE CASE.

1. Antecedent Proceedings.

December 6, 1944, the Interstate Commerce Commission, in response to an unverified complaint filed by the Freight Forwarders Institute, instituted a proceeding of investigation and inquiry (*ex parte* 160) to determine whether the activities of Pacific Coast Wholesalers' Association, its directors, officers and managerial employees, were "those of a freight forwarder" within the meaning of that term as defined by Section 402 of Part IV of the Interstate Commerce Act. After hearings, receipt of evidence, briefs and oral argument, the Commission, through Division 4, issued its Report, dated November 26, 1945 (264 I. C. C. 134) [R. 12], wherein it found the operations of respondents to be within the provisions of the exemption provided by Section 402(c) of Part IV of the Interstate Commerce Act.

Thereafter, upon petition of the Freight Forwarders Institute the proceeding was re-opened, further hearings held, evidence received, briefs and oral argument submitted, following which a further Report was rendered December 18, 1947 (269 I. C. C. 504) [R. 23]. By this latter report the Commission reaffirmed the findings and conclusions of the prior report with respect to all phases of the activities of the Association, its directors, officers and employees, except those pertaining to less carload shipments of goods purchased by members of the Association on f.o.b.-destination or price delivered basis. These shipments, like all others destined to members of the Association, were shipped pursuant to instructions given by the member-purchasers to the non-member sellers and delivered to the Association at Chicago, where they were consolidated with other shipments of members' freight

into carloads, which were then shipped by the Association to Pacific Coast points for ultimate distribution to the members.

As to such shipments of goods purchased f.o.b.-destination or on a price delivered basis, the Commission concluded that the service of the Association was rendered to the non-member sellers rather than the member purchasers, and that any saving accomplished through the consolidation and movement of such shipments in carloads constituted a "profit" to the Association and its members, contrary to the exemption provision of Section 402(c) of the Interstate Commerce Act. The Commission further held that in handling these shipments the Association "held itself out to the general public to furnish transportation service," thereby assuming the status of a "freight forwarder" as defined by Section 402(a)(5) of the Interstate Commerce Act. Since the Association had not obtained a permit to operate as a freight forwarder the Commission held that a continuance of its said operations would be in violation of Section 410(a) of the Act and, therefore, unlawful. Accordingly, the respondents were directed to discontinue the operations found to be unlawful and to notify the Commission in writing, under oath, that such operations were discontinued[1] [R. 36].

The present action was brought by appellees against the United States to have the Commission's order set aside and its enforcement enjoined [R. 1]. Appellants, Interstate Commerce Commission and Freight Forward-

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[1]The Commission's Report also specified the effective dates on or before which the discontinuance and notice thereof should be accomplished. By supplemental orders these effective dates were thereafter postponed and remained inoperative until set aside by the decree of the lower court herein.

ers Institute, intervened [R. 38, 39]. The instant appeals were taken by the United States and the Interstate Commerce Commission (113) and by Freight Forwarders Institute (114) from the decree of the District Court setting aside and enjoining the enforcement of the Commission's order [R. 61, 62].

The issue here presented is whether, on the findings of fact made by the Commission, there was a rational basis for its conclusion that the activities of appellees with respect to goods sold f.o.b.-destination or on a delivered price basis are those of a freight forwarder within the meaning of Section 402(a)(5) of the Interstate Commerce Act (49 U. S. C. 1002).

2. Factual Background.

The appellee Association was organized and existed as an unincorporated association of shippers from 1935 to 1943. It was then incorporated as a "non-profit corporation" pursuant to appropriate provisions of California law (Civil Code, Division First, Part IV, Title XII). The Association is not authorized to issue capital stock nor to earn or declare dividends. Membership, evidenced only by non-transferable certificates, is limited under the by-laws to fifty. At the close of hearings there were thirty-eight members, located or having branch establishments in one or more of five western states.

The activities of the Association are, and have been, confined to the consolidation at Chicago of less-carload freight shipments of property purchased by its members from various factories east of Chicago and the shipment of such property in consolidated carloads from Chicago to break-bulk points at Los Angeles and San Francisco, California; Phoenix, Arizona; Portland, Oregon; Seattle,

Spokane and Yakima, Washington; and Salt Lake City, Utah, from which points individual shipments are distributed to the members.

The Association consistently has refused to allow any property to be included in the consolidation which did not belong to a member.[2] All benefits in the nature of savings on freight charges from the use of carload rates have been distributed to the member or members whose property was consolidated. All other benefits derived from the activities of the Association, such as prompt and careful handling of members' shipments, maintenance of insurance coverage thereon, prosecution of loss and damage claims, and expediting the movement of shipments from origin to final destination, have accrued exclusively to the members.

The Association has no business relations or dealings on its own behalf with non-member consignors from whom

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[2]*Witness Kaylor* testified at Cleveland: "* * * we do know that unless we ship for members of the P. C. W. A. they will not accept shipments. We have on several occasions, but they have written us and said they will not accept shipments unless for members in good standing of the association." [R. 447.] * * *

"Our billing department could not find any means of transportation to the west coast at the time—everything was clogged up, and P. C. W. A. was very good on deliveries, and they (*sic*) attempted to pass them through on P. C. W. A. in hopes that they would go on through on schedule. However, they would not accept them due to the fact that the consignee was not a member of their organization." [R. 460, 461.]

"The nature of those instructions were that we ship P. C. W. A. only shipments that were to be consigned to members of the organization. * * * that is the only instruction we received (from P. C. W. A.)" [R. 457.]

Witness Novak also testified: "I am instructed by the P. C. W. A. who the consignees are that belong to the Association. We should ship via P. C. W. A. to only those that belong to the Association. * * * we have instructions in black and white who to ship to as those members of your association." [R. 467-468.]

the members purchase their property. It is designated as the consignee at Chicago pursuant to routing instructions given by its members to the non-member consignors.[3] Irrespective of whether the shipments are made "collect," "prepaid," or "freight-allowed"[4] the non-member consignors observe the routing requested by their customers and consign the shipments to the Association at Chicago.

Under the operating plan as described in the prior report, 264 I. C. C. 134, funds with which to carry on the activities of the Association are provided by "advances" made by the members to the Association on each shipment handled, in an amount equivalent to the published freight

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[3]The following representatives of non-member consignors testified that shipments were consigned to P. C. W. A. at Chicago only because of routing instructions given by their customers, members of P. C. W. A., who were the purchasers of the goods being shipped, and not by reason of any agreement or arrangement between P. C. W. A. and the non-member consignors; "Krips, R. 413-420; Reese, R. 421-2; Forrest, R. 427-8; Hunsberger, R. 436; Kaylor, R. 456; Novak, R. 464, 468; Schmetzer, R. 475-8; Wills, R. 480; Schmidt, R. 483; Harris, R. 501-2; Lange, R. 507, 512; McParland, R. 526, 531; Dickson, R. 539-540.

[4]The term "freight allowed" means simply that the seller of goods has agreed with the purchaser to allow a deduction from the list price in an amount specified in the contract of purchase to offset, in whole or in part, the amount which the seller expected and would be required to pay for transportation of the goods if he had shipped them for his own account from his place of business to that of the purchaser. Freight allowances are the result of individual bargains, and differ widely in different cases. They are variously designated as full freight allowances, freight allowances from or to designated basing points, freight allowances in a specified sum, freight allowances at a specified carrier rate, freight allowances with various restrictive conditions as to weight, quantity and type of commodity shipped, and other forms appropriate to the particular transaction. For example, a seller's price list filed herein as *Exhibit 37* (omitted in printing), contained the following terms which were read into the record: "We will allow freight not exceeding lowest tariff rate on shipments of Silencers and Installation Kits, provided total weight is 100 pounds or more." [R. 517.] See also, testimony by witnesses Hunsberger, R. 435, 436, and Pedder, R. 589-592.

forwarder, or lowest common carrier, rate, plus three per cent. Collection of these advances is accomplished through freight bills prepared by the Association while the consolidated carloads are in transit and presented to the member consignees for payment immediately upon delivery of the freight. With the money thus collected the Association pays the inbound freight charges on the less-carload shipments received at Chicago, rail freight on the consolidated carloads, delivery costs at destination, and all other expense items incidental to the operation. The remaining balance, if any, represents the "saving" which is accounted for and distributed to the members receiving the shipments. The savings, or loss, realized on each shipment is accounted for, and the member for whom the shipment was handled is credited or charged, as the case may be. In this way all savings are paid by the Association direct to the member entitled thereto. There is no distribution of savings on any other basis.

In the case of prepaid shipments received at Chicago, the Association, acting pursuant to instructions from its members, delivers its freight bills covering the "advances" due from its members who purchased the freight, to the consignor-sellers and collects from them the amount due from such members. Here again, there is no arrangement of any kind between the Association and the non-member consignor. The terms of the purchase contract under which the member acquires the property governs the action of the consignor-seller in paying the bill presented to him by P. C. W. A. upon the instruction of its member. In no case do these consignors seek or employ the services of the Association in consolidating the freight. All of the Association's service is performed upon instructions given by and for the exclusive benefit of its members.

3. The Commission's Findings.

In the proceedings before the Interstate Commerce Commission two reports were issued. In its first report dated November 26, 1945, 264 I. C. C. 134 [R. 12], the Commission made the following findings:

"The association was formed March 27, 1935, by a small group of dealers in automotive parts at Los Angeles, Calif., as a voluntary, unincorporated, nonprofit association, for the purpose of promoting the interest of its members, and to provide a means of assembling, consolidating, forwarding, and distributing freight for its members, on a nonprofit basis, and for the purpose of securing the benefits of carload, truckload, or other volume rates." [R. 13.]

"On September 27, 1943, the association was incorporated under the laws of the State of California. The purpose of the corporation, as stated in its articles of incorporation and by-laws, is substantially the same as that of its predecessor-in-interest." [R. 14.]

"Beginning in 1935 and continuing to the present time, the association has caused to be assembled, consolidated, transported, and distributed, freight from eastern origins consigned to its members * * *." [R. 15.]

"All shipments are picked up either by motor carriers or by rail carriers at various points in the East and transported in less than truckloads or less than carloads, in linehaul movement, to Chicago, Ill., and

are there delivered to the association's agent, The Transport Terminal Company, hereinafter called the Terminal Company." [R. 15, 16.]

"Members of the association instruct the shippers to bill the shipments to the Terminal Company at Chicago, with a notation on each package and on the bill of lading showing the name and address of the ultimate consignee." [R. 16.]

"The freight charges from the origin to Chicago are paid to the linehaul carriers by the Terminal Company for account of the association." [R. 16.]

"No freight is handled for non-members." [R. 17.]

"It has been established in this proceeding that the traffic handled is for members of the association, that the association was founded and has been operated, in good faith, for the purpose of effecting savings in freight charges for its members by securing the benefits of carload, truckload, or other volume rates." [R. 22.]

In its second report dated December 8, 1947, 269 I. C. C. 504 [R. 23], the Commission in effect approved and reaffirmed the foregoing findings contained in its first report. In this connection the Commission stated:

"To the extent disclosed by the evidence introduced in the original hearing, the association's organizations, its activities, and its methods of handling freight under assembling rates, of settling freight charges, and of distributing the so-called savings, are described in the prior report." [R. 25.]

Additional findings incorporated in the second report are as follows:

"All of the shipments involved are consigned from eastern origins to the association at Chicago upon instructions of the members, and are there consolidated in carloads and forwarded to destinations or breakbulk points and distributed to members of the association or to their customers in the destination areas." [R. 25.]

"On further hearing, 14 witnesses testified on behalf of representative non-member consignors[1] that their concerns customarily use the services of the association in making shipments to its members, and either prepay the freight charges or make allowances therefor. In the latter case, the consignee pays the freight charges but is allowed to deduct those charges from the invoice price of the goods.

"At destination the freight is delivered to the member consignees or to their non-member customers without additional charge. Thereafter the member is credited with the difference between the amount paid by the consignor, and the costs borne by the association for transportation, administration, handling, distribution, taxes, etc. No refunds are made to non-member consignors who paid the charges in the manner stated." [R. 27.]

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[1]Reference to the record shows that only 13 representatives of non-member consignors appeared as witnesses, viz., Krips [R. 407], Reese [R. 421], Forrest [R. 425], Hunsberger [R. 433], Kaylor [R. 446], Novak [R. 463], Schmetzer [R. 474], Wills [R. 478], Schmidt [R. 482], Harris [R. 491], Lange [R. 505], McParland [R. 525], and Dickson [R. 534].

"A relatively minor part is billed to customers of the members at the direction of the latter. All transactions relating to the purchase and sale of the customer goods are between the members and the consignors." [R. 27.]

It was also established by uncontroverted evidence, although not set forth in the Commission's findings, that all payments by non-member consignors were made pursuant to the terms of the contracts of sale whereby the member-consignees purchased from the non-member-consignors the goods comprising the shipments here involved. By these contracts and as one of the terms thereof affecting the price to be paid for the goods, provision was made for prepayment of the freight or for a "freight allowance," in a specified amount. In each instance the collection by the Association from the non-member-consignor (seller) was in accordance with the contract of purchase previously executed by its member consignee.[2]

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[2]Eleven of the thirteen representatives of the non-member consignors who appeared as witnesses testified to this effect. The other two were not interrogated and gave no testimony on the subject. Those who did so testify were: Krips [R. 409, 413, 414]; Reese [R. 422]; Forrest [R. 429-433]; Hunsberger [R. 435-437]; Kaylor [R. 457]; Novak [R. 467]; Wills [R. 480]; Schmidt [R. 488, 489]; Harris [R. 495]; Lange [R. 507, 512, 517, 521]; McParland [R. 527].

Similar testimony was given by the member consignees who were called as witnesses, viz.: Vinson [R. 558]; Lambert [R. 465]; Jensen [R. 575]; Ernst [R. 583]; Lyon [R. 587]; Pedder [R. 591-2].

SUMMARY OF ARGUMENT.

1. The Association in All of Its Activities Served Only Its Members.

The lower court correctly held that the Commission's findings of fact show conclusively that the Association acted as the agent of its members and not as the agent of non-member consignors. The Commission found that "All of the shipments involved are consigned * * * upon instructions of the members"; that the facilities of the Association were not available to non-member shippers unless arrangements for that purpose were made by members through instructions given to the Association and to the non-member consignors, and that the purpose and result of the transaction is not to benefit the shipper, but to secure for members the benefit of lower carload rates.

The term "service" implies performance responsive to employment and for the benefit of the employer. There is no evidence in the record and nothing in the Commission's findings to show that non-member consignors ever employed the Association or consigned shipments to it, otherwise than upon instructions from the members. All benefits derived from the consolidation of shipments at Chicago and the transportation thence westward under carload rates accrued exclusively to the members.

In reaching the conclusion that the Association served non-member-consignors rather than member-consignees, the Commission erroneously relied upon reasoning applied in reparation cases, which has no logical application to the present case, and failed to recognize that such conclusion is not supported by its own findings of fact.

2. The Activities of the Association Were Conducted on a "Non-profit Basis" Within the Meaning of This Phrase, as Used in Section 402(c) of the Interstate Commerce Act.

Section 402(c) exempts from freight forwarder regulations the activities of a group or association of shippers, "consolidating or distributing freight for themselves * * * on a non-profit basis, for the purpose of securing the benefit of * * * carload lots."

The Commission's report, although admitting the exemption to be applicable in the consolidation of less carload shipments of goods purchased by members of the Association, "freight collect," erroneously concluded that the exemption does not apply if the goods were purchased "f.o.b. destination" or upon "a delivered price basis." The error of the Commission's conclusion and its inconsistency with the findings of fact were pointedly indicated by the opinion of the court below, wherein it was stated that the determination of who bears the freight is a "matter of contract between the seller-consignor and the purchaser-consignee." [R. 25.]

The agreement on the part of a seller to prepay freight charges or to make a freight allowance gives rise to a correlative right on the part of the purchaser to receive the benefits thereof. This right to receive such benefits is something which he acquired and in a sense belongs to him by virtue of the contract of sale. It follows that any saving in transportation costs accomplished by the purchaser through his own association by consolidating his less carload shipments in his own pool cars likewise belongs to him. Such savings are realized on "a non-profit basis" within the meaning of Section 402(c).

3. The Association Did Not Hold Itself Out to the General Public to Transport or Provide Transportation of Property for Compensation.

The Commission's conclusion that the Association offered its services to the public is based upon the erroneous conclusion that in its operations in connection with goods sold f.o.b. destination or on a delivered price basis, it *served* the non-member-consignors rather than its member-consignees. Such conclusion has no rational support in the Commission's findings of fact, which show that the Association acted exclusively as the agent of its members and rendered no services to others except upon instructions given by its members.

ARGUMENT.

Foreword.

By way of preface to the argument, we desire respectfully to direct attention to certain basic facts which should be borne in mind throughout the consideration of the issues presented herein.

1. The respondent association was formed and has been operated for the sole purpose of arranging for the consolidation, transportation, and delivery of freight *comprising goods purchased by and shipped to its members.*

2. All goods purchased by and shipped to members were delivered to the Association at Chicago *pursuant to instructions given by Members to the consignor-sellers* from whom the goods were purchased.

3. The Association, as the agent of its members, took delivery at Chicago of all shipments which the members elected to consolidate in their own pool cars for shipment from Chicago to Pacific Coast points.

4. Payment and disposition of freight charges as between the consignor-sellers and consignee-purchasers were controlled by the terms of the contract under which the goods were acquired.

5. All savings in transportation costs realized through the operations of the Association *were distributed exclusively to the members directly benefited,* on the basis of each shipment included in the consolidation.

6. The Association consistently refused to accept for consolidation or render any service in connection with shipments of goods not purchased by its members.

7. All dealings of the Association with non-member consignors, carriers, and all others have been undertaken and performed *only on behalf of its members and pursuant to instructions given by such members.*

I.

The Report of the Interstate Commerce Commission Erroneously Finds and Concludes With Respect to Shipments of Goods Purchased by Members of the Association, f.o.b. Destination or on a Delivered Price Basis, That the Association Renders Services for Hire to Non-Member Sellers of Such Goods.

In its consideration of the operations of the Association, with respect to shipments of goods purchased by its members f.o.b. destination or on a delivered price basis, the Commission erroneously proceeded upon the assumption that the same reasoning should be applied as in reparation cases, where excessive freight charges had been collected by a carrier which consignor sought to recover. We respectfully submit that the reasoning followed in reparation cases has no application here.

The issues in a reparation case are (1) whether a wrong has been committed by a carrier in collecting excessive charges; and (2) who is entitled to sue for recovery of the excess wrongfully collected. In resolving these issues, it has been settled that the party who pays the freight charge in the first instance has suffered the injury and the court will not look beyond the first step to discover whether

this injury was ultimately passed on or compensated by another.

Adams v. Mills, 286 U. S. 297, 407;

South Pacific Co. v. Darnell-Taenzer Lbr. Co., 245 U. S. 531;

Louisville and R. R. v. Sheffield Steel & Iron Co., 269 U. S. 217.

The present case is one of investigation and inquiry. No question of tort, or right to sue, is involved. The question is whether the operations of the Association, viewed in the light of all facts and circumstances, constituted those of a freight forwarder. Involved with this issue is the question whether the service of the Association is performed for its members or for non-members consignors. The Commission, by relying solely on the rule established in reparation cases excluded consideration of uncontroverted evidence, reflected by its own findings of fact, showing the services to have been rendered exclusively to the members and for their benefit. Had such evidence and finding been given proper consideration, the Commission would necessarily have concluded: The Association served only its members in all its activities, including those pertaining to goods purchased by its members f.o.b. destination or on a delivered price basis.

The lower court correctly analyzed the Commission's findings and their true significance with respect to the proper conclusions as follows:

"Here the determinative inquiry is not as to agency as between consignor-seller and consignee-member

(*cf.* Adams v. Mills, 286 U. S. 397, 406-407 (1932), but as to the agency relationship between both or either of them and the association. And the facts found by the Commission admit of but one conclusion as to this: That the association at all times acts solely at the request, and under the direction and for the account and benefit, of the member-purchaser. As between member and association, then, the former always acts as principal, the latter as agent.

"The existence of this agency is implicit in the findings of the Commission. The report states that 'All of the shipments involved are consigned * * * upon instructions of the members' of the association. Admittedly, the facilities of the association are not available to a non-member shipper otherwise than through arrangements made by a member. And the necessary arrangements are that the member as principal instruct the association as agent to handle the shipment. Moreover, both the purpose and the result of the transaction is not to benefit the shipper, but to reduce transportation costs to the member through savings effected in cooperation with other members who likewise employ the association as transportation agent." [R. 55, 56.]

II.

The Association's Service in Connection With Shipments From Non-Member Consignors to Member Consignees, and Their Customers, of Goods Sold f.o.b. Destination or on a Delivered Price Basis, Was Performed on a "Non-Profit Basis" Within the Meaning of Section 402(c) of the Interstate Commerce Act.

Section 402(c) of the Interstate Commerce Act provides that the provisions for the regulation of freight forwarders "shall not be construed to apply to the operations of a shipper, or group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a non-profit basis for the purpose of securing the benefits of carload, truck load, or other volume rates * * *."

It is to be observed that the exemption from regulation as a freight forwarder extends to a shipper, or group or association of shippers under the following conditions:

1. Their activities must be confined to "consolidating or distributing freight *for themselves or for the members* thereof."

2. The purpose of consolidating and distributing freight must be that of "securing the benefits of carload, truckload, or other volume rates."

Obviously, this means securing benefits for themselves as a direct result from the use of carload, truckload or other volume rates, in lieu of the higher less carload rates which would otherwise apply to individual shipments included in the consolidation.

3. The operation of consolidating and distributing the freight must be conducted "on a non-profit basis."

This clearly refers to profit which might be realized from the operation of the Association if the service of consolidation were rendered for the benefit of non-members, and which would be available for distribution in the form of dividends on the basis of stock ownership or investment in the enterprise rather than as a refund to the members of savings realized on their individual shipments. Otherwise, the very purpose of the phrase "to secure the benefits of carload rates" would be nullified.

There is no ambiguity, conflict in terms, or reasonable doubt, as to the meaning of the language used in stating the conditions under which the exemption provisions of Section 402(c) shall apply. Reference to congressional debates or proceedings of congressional committees is therefore unnecessary and inappropriate.

> "Committee reports and explanatory statements of members of Congress in charge, made in presenting a bill for passage, while a legislative aid to the interpretation of a statute when its language is doubtful or obscure, cannot control such interpretation when, taking the act as a whole, the effect of the language used is clear to the court. Such aids are only admissible to solve doubt, and not to create it."
>
> *Railroad Commission v. Chi., B & Q. R. R. Co.*, 257 U. S. 563, 42 Sup. Ct. Rep. 232.

> "The meaning of the interstate commerce act of February 4, 1887 (24 Stat. at L. 379) cannot be determined from statements used in the debates in Congress, but must be interpreted by its own terms."
>
> *Omaha & C. B. Street R. Co. v. I. C. C.*, 230 U. S. 324, 33 Sup. Ct. Rep. 890.

"* * * Debates in Congress are not appropriate or even reliable guides to the meaning of the language of an enactment."

United States v. St. Paul, B. & M. R. Co., 247 U. S. 310, 38 Sup. Ct. Rep. 525.

Notwithstanding the plain language of the exemption expressed by Section 402(c), the Interstate Commerce Commission erroneously construed and restricted the meaning of this statute to exclude from the exemption benefits realized by members of the Association through consolidation of shipments of goods purchased by them on a delivered price or f.o.b. destination basis. In so doing, the Commission apparently followed through on its initial error of concluding that the service of the Association in connection with such shipments was rendered to and for the benefit of the non-member consignors rather than the member consignees.

As pointed out by the court below:

"When this member-agent relationship between member-purchaser and the Association is borne in mind, it is clear that there is no profit to the Association from the activities described in the Commission's Report." (49 U. S. C. Sec. 1002(e).)

Under the general rules of law applicable to sales, title passes as between the parties at the point from or to which shipments of goods are made "f.o.b." unless a contrary intention appears. (*United States v. R. P. Andrews & Co.*, 207 U. S. 229; *Com. v. Wiloil Corp.*, 316 Pa. 33, *affirmed in* 294 U. S. 169.) In the present proceeding, and regardless of whether the goods were purchased f.o.b. destination or on a delivered price basis, the member-consignee ordered deliveries to be made to their agent (the Association) at Chicago. Having accepted delivery at that

Affidavit of Service by Mail.

State of California, County of Los Angeles—ss.

DeEtta W. Nelson, being first duly sworn, deposes and says:

That affiant is a citizen of the United States and is a resident of the County of Los Angeles; that affiant is over the age of 18 years and is not a party to the within entitled proceeding; that affiant's business address is 241 East Fourth Street, Los Angeles 13, California;

That on the 4th day of January, 1950, affiant served the foregoing Brief on Behalf of Appellees on the Appellants in said proceeding by placing true copies thereof in envelopes addressed to the attorneys of record for said Appellants at the office addresses of said attorneys as follows:

Counsel for Appellant, The United States of America:

Philip B. Perlman, Esq. (3 copies),
Solicitor General of the United States,
Department of Justice,
Washington 25, D. C.

Counsel for Appellant, Interstate Commerce Commission:

Daniel W. Knowlton, Esq. (2 copies),
General Counsel,
Interstate Commerce Commission,
Interstate Commerce Building,
Washington 25, D. C.

Counsel for Appellant, Freight Forwarders' Institute:

Harry C. Ames, Esq. (2 copies),
Ames, Hill and Ames,
Transportation Building,
Washington 6, D. C.

and then by sealing said envelopes and depositing the same by air mail, special delivery, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

DEETTA W. NELSON.

Subscribed and sworn to before me this 4th day of January, 1950.

(Seal) MARGUERITE F. CRIPPS,
Notary Public in and for Said County and State.

My Commission expires Jan. 3, 1952.

point and assumed custody and control over the shipments by causing them to be consolidated in pool cars of the Association, the purchaser *ipso facto* became the owner of the goods. Recognition of this change of ownership when the goods were actually delivered into the possession of the purchaser's agent at Chicago would have unquestionably lead to a different conclusion on the part of the Commission. This is shown by the following statement contained in the Report.

> "The meaning of the word 'profit' varies with its context. Broadly stated, it is the excess of what is obtained over the cost of obtaining it. In the sense that they result in savings to its members, all of the association's operations are for profit. * * * But section 402(c)(1) specifically sanctions an association's obtaining for its members 'the benefits (savings) of carload * * * rates'; and if the association's operations were confined to obtaining for its members the benefits of carload rates on their own freight, such operations would appear to be excluded from the concept of profit as the word 'non-profit' is used in that section." [R. 32.]

Retention by the members of savings realized from the consolidation of shipments of goods purchased f.o.b. destination or on a delivered price basis did not transgress the non-profit clause of section 402(c). The saving so retained was in reality from their own expenditure. When non-member consignors prepaid freight or made freight allowances, they did so because of the requirements of the sale contracts under which the goods were sold to the member consignees. The obligation on the part of the sellers to pay (or allow) freight charges became fixed credits of the member-purchasers when the sale agreements were consummated. These credits to which the members

were entitled could be claimed by them in connection with any shipment regardless of the mechanics of transportation procedure used in making the shipment; irrespective of whether shipment moved "freight collect" or "prepaid" or subject to "freight allowance," the member consignee was entitled to cash or credit representing the amount determined by the sale agreement as the freight allowance.

In the case of collect shipments, freight charges were paid from money advanced by the member-consignee. On prepaid shipments the money was (advanced) by the non-member consignor to the Association and credit given therefor by the Association to the member consignee, but this payment by the non-member consignor was made pursuant to instructions given to the consignor by the member consignee. These instructions were followed by the consignor because the terms of the sale contract provided for a freight allowance (or prepayment) to be made by the seller. It was in every case one of the considerations moving from the seller to obtain the business and was reflected in the price which the consignee member was required to pay. In brief, the payment by the non-member consignor came out of the pocket of the member consignee as surely as if the latter had made it himself.

We respectfully submit that the Commission erred in its conclusion that the member-consignees realized a profit when they received the savings paid out of freight allowances. Within the concept of the non-profit clause of section 402(c) one does not make a profit when he gets back his own money.

III.

The Commission's Findings Do Not Support the Conclusion That the Association Holds Itself Out to the General Public to Transport or Provide Transportation of Property for Compensation, Within the Meaning of Section 402(a)(5) of the Interstate Commerce Act.

This conclusion is obviously related to the definition of the term "freight forwarder" stated in Section 402(a)(5) as follows:

> "The term 'freight forwarder' means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II or III of this Act." (Emphasis supplied.)

To constitute one a "freight forwarder" within the meaning of the foregoing definition, four essential elements are required. The first and most important is that there must be a holding out to the general public to transport or provide transportation for compensation. In other

words, the activities must be essentially those of a common carrier.

The law is well settled that certain essential characteristics must be established before common carrier status is proved. Corpus Juris Secundum furnishes a clear statement on this subject, supported by a great number of decisions.

> "A common carrier of goods has been defined as one who, by virtue of his calling, and as a regular business, undertakes to transport goods from place to place, offering his services to such as may choose to employ him and pay his charges, and without regard to distance or motive power. * * *
>
> "The test by which it is determined whether a party is a common carrier of goods is: (1) He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally as a business, and not as a casual occupation. (2) He must undertake to carry goods of the kind to which his business is confined. (3) He must undertake to carry by the methods by which his business is conducted, and over his established roads. (4) The transportation must be for hire. The distinctive characteristics of a common carrier are those stated in the first test set out above, viz: That he holds himself out as ready to engage in the transportation of goods for hire as a public employment, and not as a casual occupation, and that he undertakes to carry for all persons indifferently, within the limits of his capacity and the sphere of the business required of him, so that he is bound to serve all who apply, and is liable for refusal, without sufficient reason, to do so.

"In general, the liability of carrier does not attach to one that does not hold itself out as pursuing that business, but in the particular case, and in each particular case acts only in consequence of a special employment. The law applicable to common carriers is peculiarly rigorous, and it ought not to be extended to persons who have neither expressly assumed that character nor by their conduct and from the nature of their business justified the belief on the part of the public that they intended to assume it. * * *" (13 C. J. S. pp. 125-28.)

It remains to be determined whether the operations of the Association as revealed by the facts reflected in the Commission's findings bring it within the scope of the definition of a freight forwarder. These facts may be briefly summarized as follows:

(a) The Association engaged solely in consolidating, forwarding, distributing and accounting for shipments of property purchased by and destined to its members. It did not avertise its services nor invite the public to use them, and has consistently refused to accept shipments for consolidation, not purchased by its members.

(b) The Association acted only on specific instructions given by its members, and the non-member sellers consigned shipments to the Association for consolidation only because instructed to do so by the members.

(c) The Association earned no profits and declared no dividends. The entire cost of the operation was apportioned to and borne by the members. The only funds handled by the Association were those made

available to it by its members, as "advances," and the Association acted as the managing and disbursing agent for the members, using these funds to pay the actual costs of operation and refunding the unspent balance to the member or members who advanced it.

Such operations, we submit, were not held out to the public. The Association was not engaged in the business of consolidating and distributing freight as a public undertaking. It neither served nor offered to serve anyone other than its members and all of the benefits derived from its operations were enjoyed exclusively by the members.[1]

The conclusion expressed by the Commission "that the association's service is held out to and performed for the general public," rests upon the assumed correctness of the prior conclusion that, with respect to shipments of goods sold on a delivered price or f.o.b. destination basis, the Association "serves" the non-member consignor rather than the member consignee. This conclusion in turn is based entirely upon the reasoning applied in reparation

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[1]Transportation service rendered to a cooperative association, its stockholders or members, has been generally held to be not that of a common carrier; the reason being that such service does not constitute a "holding out" to serve the general public.

Davis v. People (1926), 79 Colo. 642, 247 Pac. 801;

Parlett Cooperative v. Tidewater Lines (1933), 164 Md. 405, 165 Atl. 313;

Hisem v. Guran, 102 Ohio St. 59, 146 N. E. 808;

Public Utilities Com. v. Holdren, 34 Ohio App. 416, 171 N. E. 255;

Dairymen's Coop. Sales Assoc. v. Public Serv. Com., 318 Pa. 381, 177 Atl. 770;

98 A. L. R. 226, annotation.

cases to the effect that when goods are sold f.o.b. destination the consignor pays and bears the charges. The fallacy of these conclusions, as we appraise them, and the inapplicability of the reasoning of reparation cases to this investigation-of-status proceeding has been pointed out and argued in the preceding pages of this petition. Without repeating this argument we desire, respectfully, to direct the Court's attention to what appears to be the true situation.

The record and findings disclose that the Association was created and operated solely for the benefit of its members. It made no arrangements with and was not employed by nonmember consignors to handle *their freight.* It restricted its operations to consolidating and distributing freight "for its members" and distributed all benefits derived from such consolidation to its members. It was not engaged in the business of consolidating goods for others as a public employment and even the inclusion of the relatively small number of "prepaid" and "freight allowed" shipments was not service "for hire" rendered to the non-member consignors. They did not hire or employ the Association to render this service.

Despite these facts and circumstances, the Commission concluded that the Association received money from and therefor served the non-member consignors, and that in so doing, "holds itself out to the general public" to render a consolidation and distribution service. We respectfully submit that in thus treating freight allowances, bought and paid for by the members in purchasing their goods, as compensation for transportation services rendered to the non-member consignors by the Association for hire, a sacrifice of facts to fiction has been accomplished.

The cases cited by the Commission's Report in support of its conclusion "that the association's services is held out to and performed for the general public," involved facts quite different from those presented in the case at bar, and do not support the conclusion.

Terminal Taxicab Co. v. Kutz, 241 U. S. 252, the first case cited, presented the question whether the taxicab company operating in Washington, D. C., was a common carrier as to all phases of its operations. One part of its business was that of maintaining cabs at the Union Railroad Station where it had a lease to operate a cab stand for the accommodation of persons arriving at the station and seeking transportation to their homes, offices, or other destinations. Another part was that of maintaining cabs at places reserved for them at certain hotels, pursuant to contractual arrangements between the hotels and the taxicab company. These cabs, like those at the railway station, were made available to and used by such members of the general public as wanted a taxicab. The Supreme Court concluded that notwithstanding the contractual right to occupy space reserved for its cabs at the depot and the hotels, the cab company was engaged in the business of rendering taxicab service to such members of the public as might wish to employ them. In this connection Mr. Justice Holmes used the expression quoted in the Commission's report, "no carrier serves all the public." With respect to the remaining portion of the taxicab company's business, consisting mainly of furnishing automobiles upon order, but reserving the right to refuse service, and making individual bargains for each service rendered, the court held that the business was not that of a public utility.

In both of the other cases cited (*Phillips Packing Co., Inc.*, Common Carrier Application, 260 I. C. C. 297, and

Toussaint Contract Carrier Application, 41 M. C. C. 459), the carriers involved were found by the Commission to be engaged *in the business of transportation*, and the service involved to be that of transporting goods sold by certain supply houses to their customers, who paid the carrier for the service thus rendered. But in these cases the supply houses were dealing with the general public in offering their goods for sale to whomsoever might seek to buy them. Obviously, then, a carrier transporting the purchased goods for and receiving his freight charges from the purchaser would be acting as a common carrier serving such members of the general public as saw fit to deal with the supply houses. Such service is similar to that described in *Terminal Taxicab Company v. Kutz*, 241 U. S. 252, wherein a taxicab service was rendered to such members of the public as might patronize the hotels at which the taxicab company had its leased stands.

Under the well settled principles governing the determination of common carrier status, it would appear that the correctness of the decisions in each of the three cases cited by the Commission rests squarely on the fact that there was an offer or holding out on the part of the supply houses or hotels to sell their supplies (or services) to any one of the general public desiring to purchase and willing to pay the seller's price. In absence of such "holding out to the general public," the principal element of common carrier service would be missing.

In the present proceeding the facts are radically different. Here the consignee members of the Association do not deal with the general public when they purchase their supplies from non-member consignors. On the contrary, they select the factories or suppliers with whom they will deal and all of their purchases are the result of individual bargains. By no stretch of the imagination could it be

found upon the facts of record in this case that any factory desiring to sell and ship goods to a member of the respondent association is free to do so. It is one thing to say that a merchant who sells to anyone seeking to buy his goods thereby deals with the public, but it is quite another thing to conclude that a buyer who purchases his supplies from one or more factories, making an individual bargain in each case, thereby deals with the public. We respectfully submit that even though it were assumed for the sake of argument that the association served the non-member consignors in consolidating shipments purchased by its members from such consignors on a delivered price or f.o.b. destination basis, it does not follow and cannot be assumed that such service is held out to and performed for the general public.

Conclusion.

For the reasons herein stated, the conclusions of the Interstate Commerce Commission in its Report R. 269, I. C. C. 504 [R. 23], are not supported by the findings of fact contained in said report, and the decree of the court below should be affirmed.

Respectfully submitted,

HUGH GORDON,
WYMAN C. KNAPP,
Attorneys for Appellees.

January 3, 1950.